

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



Atty

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 29, 2011

Bridget Bohac, Office of the Chief Clerk
Texas Commission on Environmental Quality
MC-105
P O Box 13807
Austin, Texas 78711

RE: **Executive Director's Response to Hearing Request**
2011-1124-IWD
Luminant Mining Company LLC

CHIEF CLERK'S OFFICE

2011 AUG 29 PM 4:37

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

Dear Ms. Bohac:

Enclosed for filing is the original and (7) seven copies of the Executive Director's Response to Hearing Request regarding Luminant Mining Company LLC.

If you have any questions, please contact me at (512) 239-5778.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Tatu".

Anthony Tatu
Staff Attorney
Environmental Law Division

cc: Mailing List

TCEQ DOCKET NO. 2011-1124-IWD

APPLICATION BY	§	BEFORE THE PM 11:37
LUMINANT MINING COMPANY	§	
FOR MAJOR AMENDMENT TO	§	TEXAS COMMISSION ON
WQ PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ0004122000	§	

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (the TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Luminant Mining Company (the Applicant) for a major amendment to Water Quality Permit No. WQ0004122000. Linda Tucker submitted a hearing request on behalf of the East Texans Coalition for Clean Air (ETCCA). The Executive Director respectfully recommends that this hearing request be denied, however the Executive Director's recommendation may change if additional information is provided by the ETCCA.

Attached for Commission consideration are the following:

Attachment A – GIS Map

Attachment B – Affected Landowner's Map & Affected Landowner's List

Attachment C – Compliance History

Attachment D – Technical Summary and Draft Permit

Attachment E – Executive Director's Response to Public Comment

II. Description of the Facility

Luminant Mining Company LLC, which operates MonticelloThermo Lignite Mining Area, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0004122000 to authorize the addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the existing Northern Boundary of the MonticelloThermo Lignite Mining Area.

The current permit authorizes the discharge of mine drainage and surface runoff from the active mining area, groundwater, and previously monitored effluents (surface runoff from post mining areas and previously monitored Outfall 001 effluent on an intermittent and flow variable basis via Outfall 101 and treated domestic wastewater at a daily average flow not to exceed 2,600 gallons per day via Outfall 201) on an intermittent and flow variable basis via Outfall 001.

The facility is located on State Highway 11, approximately 2.5 miles southeast of the intersection of State Highway 11 and Interstate Highway 30, Hopkins County, Texas 75482.

The effluent is discharged to an unnamed tributary; thence to Rock Creek; thence to White Oak Creek; thence to Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin.

III. Procedural Background

The application was received on June 30, 2010, and declared administratively complete on August 16, 2010, and declared technically complete on November 2, 2010. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in the *Sulphur Springs News Telegram* on September 14, 2010 and the *La Prensa Hispana* on September 15, 2010. The Notice of Application and Preliminary Decision (NAPD) was published in the *Sulphur Springs News Telegram* on January 20, 2011 and the *La Prensa Hispana* on January 12, 2011. The public comment period closed on February 22, 2011. The Executive Director's Response to Public Comment was filed on May 27, 2011. The Executive Director's final decision letter was mailed on June 1, 2011, and the period for filing a Request for Reconsideration or Contested Case Hearing ended on July 1, 2011. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. The Commission implemented House Bill 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. The application was declared administratively complete on August 16, 2010 therefore it is subject to the procedural requirement of HB 801.

A. Response to Request

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- a) whether the requestor is an affected person;
- b) whether issues raised in the hearing request are disputed;
- c) whether the dispute involves questions of fact or of law;
- d) whether the issues were raised during the public comment period;
- e) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- f) whether the issues are relevant and material to the decision on the application; and
- g) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided...and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- a) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible fax number, who shall be responsible for receiving all official communications and documents for the group;
- b) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a matter not common to members of the general public;
- c) request a contested case hearing;
- d) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's response to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- e) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. “Affected Person” Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an “affected person.” Section 55.203 sets out who may be considered an affected person.

a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

b) Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.

c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- 1) whether the interest claimed is one protected by the law under which the application will be considered;
- 2) distance restrictions or other limitations imposed by law on the affected interest;
- 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- 5) likely impact of the regulated activity on the use of the impacted natural resource by the person; and
- 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 50.203.

A group or association may also request a contested case hearing. In order for a group or association to request a contested case hearing, the group or association must show that it meets the following requirements:

- a) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- b) the interests the group or association seeks to protect are germane to the organization's purpose; and
- c) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). In addition the Executive Director, Public Interest Counsel, or the Applicant may request that a group or association provide an explanation of how the group or association meets the above requirements. 30 TAC § 55.205(b).

D. Referral to the State Office of Administrative Hearings (SOAH)

When the Commission grants a request for a contested case hearing, they are required to issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing. 30 TAC § 50.115(b). Subsection 50.115(c) sets out the test for determining whether an issue may be referred to SOAH. "The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: 1) involves a disputed question of fact; 2) was raised during the public comment period; and 3) is relevant and material to the decision on the application." 30 TAC § 50.115(c).

V. Analysis of the Request

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, who qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

1. Whether the Requestors Complied with 30 TAC § 55.201(c) and (d)?

The public comment period for this permit application ended on February 22, 2011. The period for timely filing a request for a contested case hearing on this permit application ended on July 1, 2011. The Office of the Chief Clerk received ETCCA's written hearing requests on February 22 and 24th, 2011. In addition, the hearing requests listed relevant and material issues that were raised during the comment period. Therefore, the hearing request complied with 30 TAC Section 55.201(c).

ETCCA's hearing request also provided Ms. Tucker's name, address, daytime phone number, and explicitly requested a contested case hearing. Although ETCCA's hearing request did not identify a member of the group's location and distance relative to the proposed activity, the Executive Director has determined that Ms. Tucker's residence is approximately 1.8 and 2.1 miles from the proposed new outfalls. In addition the Executive Director estimates that Ms. Tucker resides approximately 0.9 miles away from the proposed discharge route of Rock Creek. However, the hearing request did not explain why members of ETCCA would be adversely affected in a manner not common to members of the general public, as required by 30 TAC Section 55.201 (d).

*The Executive Director recommends that the Commission find that **ETCCA's** hearing request **does not meet** the requirements of 30 TAC § 55.201(d).*

2. Whether the Requestors are Affected Persons?

ETCCA's hearing request does not provide sufficient information to establish either affected party status or group standing. ETCCA submitted a hearing request raising a variety of concerns associated with lignite mining. However, ETCCA, which is represented by Ms. Tucker, does not identify a member of the group who would otherwise have standing to request a hearing in their own right as required by 30 TAC Section 55.205 (a) (1). As previously discussed above, Ms. Tucker herself is not an affected person because the location of her property is neither adjacent nor downstream of the discharge route, based upon the address provided. Her property or residence is

approximately two miles away from the outfalls and approximately one mile away from the discharge route at its closest point and separated from the discharge route by property owned by other landowners. Therefore, Ms. Tucker's interest in the TPDES permit amendment application is not a personal justiciable interest, but rather an interest common to the general public. In addition, the TCEQ regulates the discharge of waster from the mine and not the mining activity itself (which is regulated by the Railroad Commission). Therefore, any alleged impacts caused by the mining activity (as opposed to the discharge of wastewater) which could potentially affect Ms. Tucker, are not a valid basis for establishing standing for the TPDES permit amendment application. See 30 TAC §§ 55.203(c)(1), (c)(2), and (c)(3). For example, ETCCA states in its hearing request that they are concerned about illnesses traceable to lignite mining; health issues related to mining activities are beyond the scope of an application for a TPDES wastewater discharge permit. ETCCA raised issue with "longwall" mining and states that "longwall" mining is especially hazardous to the atmosphere, human and animal population; TCEQ does not regulate lignite mining in Texas. ETCCA wants to know the underground areas compromised by all Texas mines; TCEQ does not have jurisdiction to regulate mining activities in Texas. ETCCA wants "Texas Coal Mines/Luminant/TXU investigated for illegal procedures" and whether they are following state and federal regulations and guidelines - TCEQ can only investigate complaints relating to the TPDES permits; all complaints relating to mine safety and procedure are under the purview of the Railroad Commission of Texas. These and other similar issues raised in the hearing requests relate to interests not protected by the law under which the application is be considered. No reasonable relationship exists between most of the interests claimed by ETCCA and the activity regulated under the draft permit.

*The Executive Director recommends that the Commission find that **ETCCA has not established group standing** under 30 TAC § 55.205 and **is not an affected person** under 30 TAC § 55.203. The Executive Director's recommendation may change if the group provides the name of one or more members who are affected persons and provides additional information to show that the interests the group seeks to protect by protesting the TPDES permit application are germane to its purpose.*

3. Whether the Issues Raised are Referable to SOAH for a Contested Case Hearing?

The Executive Director has analyzed the issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. All identified issues in this response are considered disputed, unless otherwise noted.

1. Whether the requestor's health problems are traceable to the activities at the applicant's facility as it relates to discharge of wastewater under TPDES permit No. WQ0004122000?

This issue was raised and addressed in the Executive Director's Response to Public Comment, Response No. 1. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

2. Whether the draft permit has adequate safeguards to protect water quality in the receiving streams?

This issue was raised and addressed in the Executive Director's Response to Public Comment, Response No. 3. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

3. Whether the draft permit has adequate sampling and monitoring provisions for the chemical constituents likely to be found in the wastewater from the applicant's activities at the mining facility?

This issue was raised and addressed in the Executive Director's Response to Public Comment, Response No. 1. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

4. Whether this permitting action has compromised or will negatively affect underground areas?

This issue was raised and addressed in the Executive Director's Response to Public Comment, Response No. 4. However, this issue is not assessed during the wastewater permitting process.

*The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.*

5. Whether lignite mining should be banned in Texas?

This issue was raised and addressed in the Executive Director's Response to Public Comment, Response No. 3. However, this issue is not assessed during the wastewater permitting process and is not relevant and material to a decision on the permit application.

*The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.*

6. Whether CO₂ emissions can be regulated under the TPDES wastewater permitting program?

This issue was raised and addressed in the Executive Director's Response to Public Comment, Response No. 5. However, this issue is not assessed during the wastewater permitting process, and is not relevant and material to a decision on the permit application.

*The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.*

7. Whether any Texas politicians, state or federal agencies have accepted contributions or kickbacks from the Applicant?

This issue involves a question of fact, was raised during the public comment period, and was not withdrawn. However, this issue is not assessed during the wastewater permitting process. This issue is not relevant and material to a decision on the permit application. *The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.*

VI. Duration of the Contested Case Hearing

Should the Commission decide to refer this case to SOAH, the Executive Director recommends a nine-month duration for a contested case hearing from the date of the preliminary hearing to the presentation of a proposal for decision.

VII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

- a) Find that ETCCA is not an affected person and deny the hearing request by the group.
- b) Should the Commission find that ETCCA meets the requirements of 30 TAC Section 55.205, the following issues should be referred to SOAH for a Contested Case Hearing for a duration of nine months:
 - 1. Whether the requestor's health problems are traceable to the activities at the applicant's facility as it relates to discharge of wastewater under TPDES permit No. WQ0004122000?**
 - 2. Whether the draft permit has adequate safeguards to protect water quality in the receiving streams?**

3. Whether the draft permit has adequate sampling and monitoring provisions for the chemical constituents likely to be found in the wastewater from the applicant's activities at the mining facility?

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

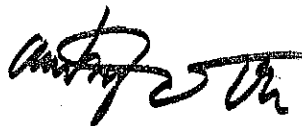


Anthony Tatu, Staff Attorney
Environmental Law Division
State Bar No. 00792869
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Austin, Texas 78711-3087
Phone (512) 239-5778
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on, August 29, 2011, the original and seven copies of the "Executive Director's Response to Hearing Request" for WQ0004122000 were filed with the TCEQ's Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Anthony Tatu, Staff Attorney
Environmental Law Division

CHIEF CLERK'S OFFICE

2011 AUG 29 PM 4:37

EX-105
COMMUNICATIONS
DIVISION
JULY

**MAILING LIST
FOR
LUMINANT MINING COMPANY LLC
TPDES PERMIT NO. WQ0004122000**

FOR THE APPLICANT:

Joe Palin
Luminant Mining Company LLC
500 North Akard Street, LP12-080B
Dallas, Texas 75201

Hailey Jett, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division-MC 148
PO Box 13087
Austin, Texas 78711-3087

**PROTESTANT/INTERSTED
PERSONS:**

Linda Tucker, Founder and Chairman
East Texas Coalition for Clean Air
1613 Lakeshore Drive
Sulphur Springs, Texas 75482

**FOR PUBLIC INTEREST
COUNSEL:**

Amy Swanholm
Texas Commission on Environmental
Quality
Public Interest Counsel-MC 103
PO Box 13087
Austin, Texas 78711-3087

FOR THE EXECUTIVE DIRECTOR:

Anthony Tatu
Texas Commission on Environmental
Quality
Environmental Law Division-MC 173
PO Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

Bridget Bohac
Texas Commission on Environmental
Quality
Office of the Chief Clerk- MC 105
PO Box 13087
Austin, Texas 78711-3087

ATTACHMENT “A”

Luminant Mining Co. LLC
TPDES Permit No. WQ0004122000



*Protecting Texas by
 Reducing and
 Preventing Pollution*

Texas Commission on Environmental Quality
 OIS Team (Mail Code 197)
 P.O. Box 13687
 Austin, Texas 78711-3687

August 19, 2011

0 0.05 0.1 0.2 0.3 0.4 0.5 0.6 Miles

Projection: Texas Centric Mapping System
 (TCMS) - Albers
 Scale 1:28,965

Legend

- ⊙ Facility Outfall
- △ Hearing Requestor (physical address)

Source: This map was requested by TCEQ's Office of Legal Services (OLS). The location of the outfalls were provided by OLS and are not part of TCEQ's outfall inventory database. The property boundaries (if applicable) depicted were manually digitized and approximated (survey data not available) using paper maps provided by OLS.

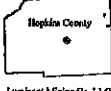
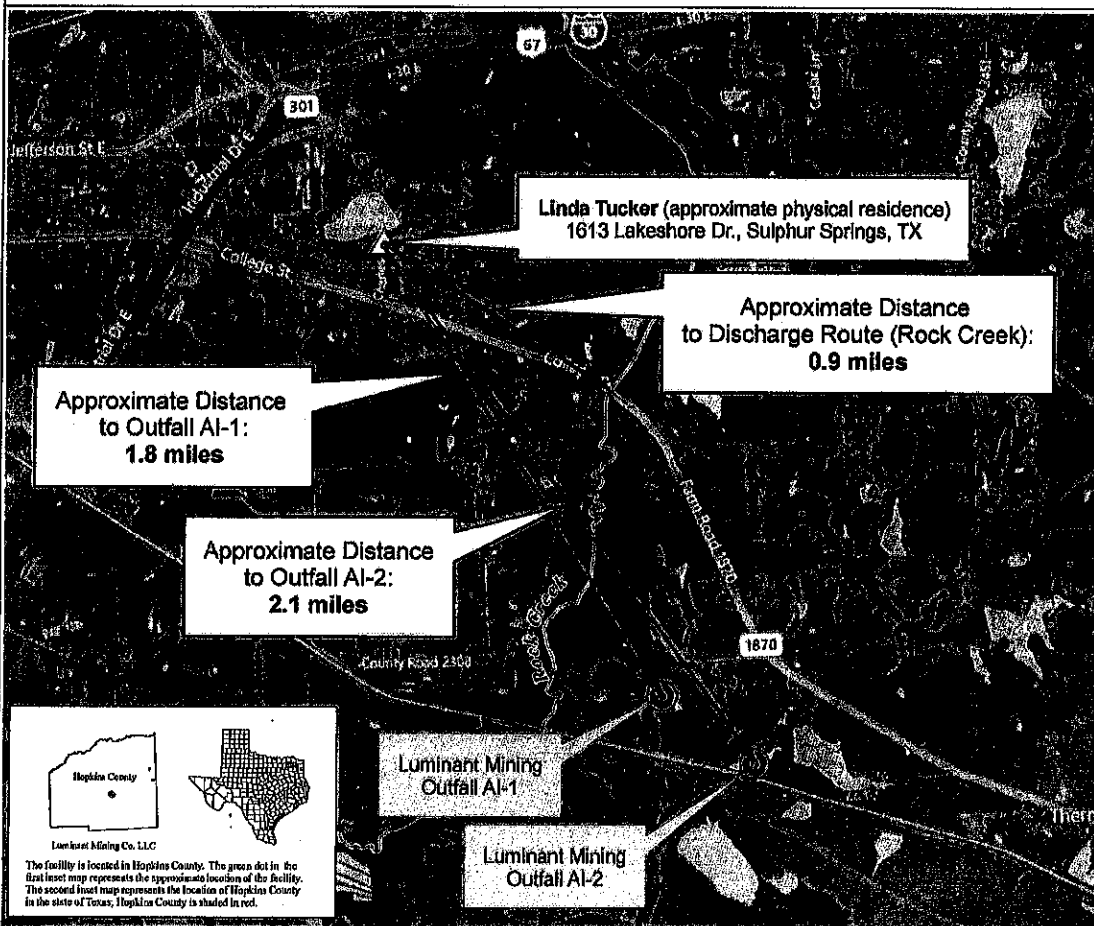
Hearing Requestor addresses (if applicable) were provided by OLS and geocoded using Tele Atlas Streets 2009 geodatabase technology.

Measurements provided are estimates and have not been measured with precise ground-based instrumentation.

The DOQQ (Digital Orthophoto Quarter Quadrangle) aerial imagery was obtained using a Bing data service from (c) 2009 Microsoft Corporation and its data suppliers.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resources Division at (512) 239-0800.

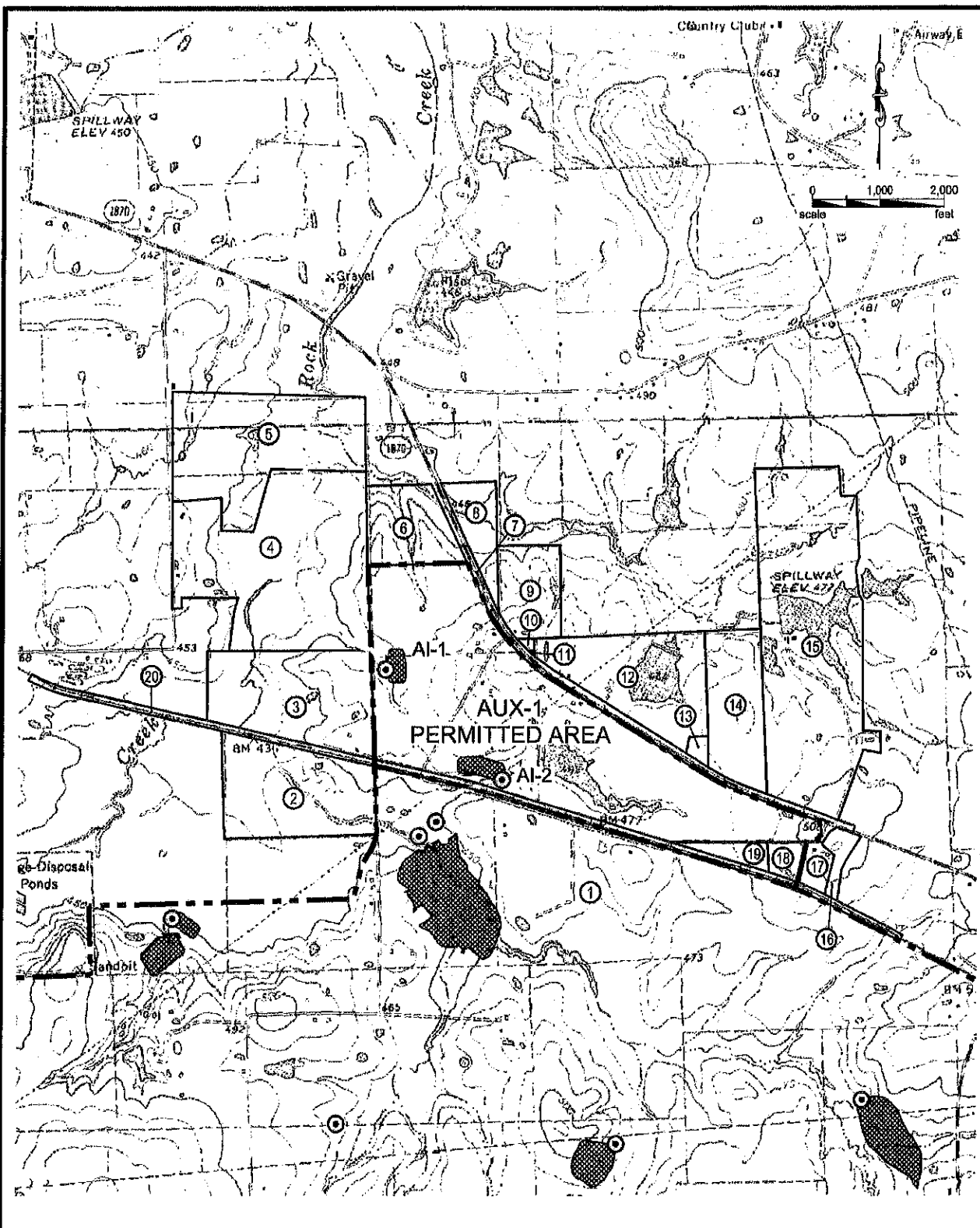
PR DASHOW - CWP 155781



Luminant Mining Co. LLC

The facility is located in Hopkins County. The green dot in the first inset map represents the approximate location of the facility. The second inset map represents the location of Hopkins County in the state of Texas. Hopkins County is shaded in red.

ATTACHMENT “B”



445768 LUM-THERMO-PROP.DWG 8/9/10

Legend	
	Outfall Location
	Active Mine Pond
	Luminant Boundary
	1-mile Discharge Route

Attachment D

Property Map

Thermo Mine

PARSONS

Thermo Aux-1 Area Landowner List

Map I.D.	Owner Name	Address	City	Zip
1	Luminant Mining Company	500 N. Akard St.	Dallas, TX	75201
2	Roger and Kim Ridner	556 CR 2309	Sulphur Springs, TX	75482
3	Roger and Kim Ridner	556 CR 2309	Sulphur Springs, TX	75482
4	Tim and Pat Tolson	2150 CR 2308	Sulphur Springs, TX	75482
5	George and Barbara Law	2396 CR 2308	Sulphur Springs, TX	75482
6	Luminant Mining Company	500 N. Akard St.	Dallas, TX	75201
7	State of Texas c/o State Dept. of Highways	125 E. 11th Street	Austin, TX	78701-2483
8	Deanna Landers	4698 FM 1870	Sulphur Springs, TX	75482
9	John and Karey Henry II	4561 FM 1870	Sulphur Springs, TX	75482
10	John and Karey Henry II	4561 FM 1870	Sulphur Springs, TX	75482
11	John and Karey Henry II	4561 FM 1870	Sulphur Springs, TX	75482
12	John and Karey Henry II	4561 FM 1870	Sulphur Springs, TX	75482
13	Jeffrey B. Stinson	5195 FM 1870	Sulphur Springs, TX	75482
14	John and Karey Henry II	4561 FM 1870	Sulphur Springs, TX	75482
15	J.B. Stinson, Trustee	5195 FM 1870	Sulphur Springs, TX	75482
16	Teddy G. and Janice A. Steward	31 CR 2306	Sulphur Springs, TX	75482
17	James B. and Kimberly Pace	69 CR 2306	Sulphur Springs, TX	75482
18	Sunbelt Custom Mineral LLC	1726 FM 2560	Sulphur Springs, TX	75482
19	Sunbelt Custom Mineral LLC	1726 FM 2560	Sulphur Springs, TX	75482
20	Kansas City Southern Railway Company	328 Oak Avenue	Sulphur Springs, TX	75482

ATTACHMENT “C”

Compliance History Report

PENDING

Customer/Respondent/Owner-Operator:	CN603263773	Luminant Mining Company LLC	Classification: AVERAGE	Rating: 1.70																		
Regulated Entity:	RN102806189	MONTICELLO THERMO LIGNITE MINING AREA	Classification: HIGH	Site Rating: 0.00																		
ID Number(s):	<table border="0"> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>4002</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>HR0017V</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>REGISTRATION</td> <td>78151</td> </tr> <tr> <td>WASTEWATER</td> <td>PERMIT</td> <td>WQ0004122000</td> </tr> <tr> <td>WASTEWATER</td> <td>EPA ID</td> <td>TX0071081</td> </tr> <tr> <td>STORMWATER</td> <td>PERMIT</td> <td>TXR05K111</td> </tr> </table>				AIR NEW SOURCE PERMITS	PERMIT	4002	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HR0017V	AIR NEW SOURCE PERMITS	REGISTRATION	78151	WASTEWATER	PERMIT	WQ0004122000	WASTEWATER	EPA ID	TX0071081	STORMWATER	PERMIT	TXR05K111
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WASTEWATER	PERMIT	WQ0004122000																				
WASTEWATER	EPA ID	TX0071081																				
STORMWATER	PERMIT	TXR05K111																				
Location:	FROM THE INTERSECTION OF IH30 & HWY 11, 3MI S O HWY 11 TO CR 2309, LEFT & 2MI TO MINE SITE																					
TCEQ Region:	REGION 05 - TYLER																					
Date Compliance History Prepared:	September 22, 2010																					
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.																					
Compliance Period:	June 30, 2005 to September 22, 2010																					
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History																						
Name:	Sam Trevino	Phone:	239 - 0266																			

Site Compliance History Components

- Has the site been in existence and/or operation for the full five year compliance period? Yes
- Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
- If Yes, who is the current owner/operator?

OWNOPR	Luminant Mining Company LLC
OWNOPR	TXU Mining Company LP
OWNOPR	
- If Yes, who was/were the prior owner(s)/operator(s)?

OWN	TXU Mining Company LP
OWN	TXU Mining Company
- When did the change(s) in owner or operator occur?

10/01/2007	OWN	TXU Mining Company
02/08/2010	OWN	TXU Mining Company LP
- Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
- Any criminal convictions of the state of Texas and the federal government.
N/A
- Chronic excessive emissions events.
N/A
- The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/28/2005	(444398)
2	08/29/2005	(444399)
3	09/28/2005	(444400)
4	10/26/2005	(474969)
5	11/28/2005	(474970)
6	01/27/2006	(474971)
7	02/28/2006	(474967)
8	03/27/2006	(474968)
9	04/24/2006	(502591)
10	05/30/2006	(502592)
11	06/28/2006	(502593)
12	07/21/2006	(486826)

13	07/21/2006	(502594)
14	08/25/2006	(524912)
15	09/25/2006	(524913)
16	10/24/2006	(524914)
17	11/17/2006	(549819)
18	12/20/2006	(549820)
19	01/23/2007	(549821)
20	02/23/2007	(549818)
21	03/22/2007	(584072)
22	04/24/2007	(584073)
23	05/24/2007	(584074)
24	06/22/2007	(584075)
25	07/24/2007	(584076)
26	08/23/2007	(608433)
27	09/24/2007	(608434)
28	10/24/2007	(608435)
29	11/14/2007	(623079)
30	12/20/2007	(623080)
31	01/24/2008	(623081)
32	02/20/2008	(674485)
33	03/25/2008	(674486)
34	04/24/2008	(674487)
35	05/21/2008	(692826)
36	06/18/2008	(692827)
37	07/21/2008	(692828)
38	08/25/2008	(713989)
39	09/25/2008	(713990)
40	10/23/2008	(713991)
41	11/24/2008	(730029)
42	12/23/2008	(730030)
43	01/23/2009	(730031)
44	02/25/2009	(753203)
45	03/25/2009	(753204)
46	04/24/2009	(753205)
47	05/22/2009	(770737)
48	06/15/2009	(770738)
49	07/31/2009	(812032)
50	08/21/2009	(812033)
51	09/24/2009	(812034)
52	10/24/2009	(812035)
53	11/25/2009	(812036)
54	12/22/2009	(812037)
55	01/25/2010	(812038)
56	02/25/2010	(812031)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

....

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

ATTACHMENT “D”

Request for Comments -- Draft Conditions
TCEQ – Water Quality Division
Phone: (512)239-4671
Fax: (512)239-4430
Mailing Address: TCEQ, Water Quality Division, P.O. Box 13087,
Austin, TX 78711-3087

TO: Region: **5**

Submitted by: **Samuel Trevino** E-Mail ID: **strevino** Phone: **(512) 239-0266**

Date Request Submitted:

Comments Deadline: **Within 10 days**

Date Application Received by TCEQ in Austin: **June 30, 2010**

REGIONAL OFFICES: The entity below has submitted an application for the project referenced below in accordance with regulations of the TCEQ. Please return comments ASAP, but no later than the comments deadline which is 10 days from the submittal date. Permit disposition will proceed after comments are received or after the comments deadline has passed. If no comments are received within this time frame, we will assume you have no comments or objections to the project as proposed. Please return a complete copy of the form (both sides) with your comments.

PROJECT TYPE: **Major Amendment**

TEAM ASSIGNED: **Industrial**

TPDES/TLAP: **TPDES**

REGULATED ENTITY NO.:
RN102806189

PERMIT NO.: **WQ0004122000**

COMPANY NAME: **Luminant Mining Company LLC**

CUSTOMER REFERENCE NO.:
CN603263773

PLANT NAME: **Monticello-Thermo Lignite Mining Area**

ADDRESS: **500 North Akard Street, LP12-080B Dallas, Texas 75201**

SEGMENT: **0303**

COUNTY: **Hopkins**

TECHNICAL CONTACT: **Mr. Joel Palin**

PHONE: **(214) 875-9127**

MAJOR/MINOR: **MINOR**

COMPLIANCE RATING: CN = Average (1.70); RN = High (0.00)

SUMMARY OF APPLICATION REQUEST: **Luminant Mining Company LLC, which operates Monticello-Thermo Lignite Mining Area, has applied for a major amendment to TPDES Permit No. WQ0004122000 to authorize the addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the existing Monticello-Thermo Lignite Mining Area boundary to the north. The current permit authorizes the discharge of mine drainage and surface runoff from the active mining area, groundwater, and previously monitored effluents (surface runoff from post mining areas and previously monitored Outfall 001 effluent on an intermittent and flow variable basis via Outfall 101 and treated domestic wastewater at a daily average flow not to exceed 2,600 gallons per day via Outfall 201) on an intermittent and flow variable basis via Outfall 001.**

PERMIT WRITER COMMENTS: **None.**

**Request for Comments -- Draft Permit
RESPONSE**

TO:

FROM:

Region:

Copy of Application Received by your Office: ☐ YES ☐ NO Date Received: _____

COMPANY NAME:

PERMIT NO.: WQ0004122000

REGULATED ENTITY NO:

RN102806189

Investigator's/Compliance Officer's Name (Please Print): _____

Phone: _____

Comments Deadline (from pg. 1):

Date of Last Site Visit: _____

COMMENTS ON CONDITIONS: (Please mark up draft special conditions with your comments. Please address applicability and enforceability. List any additional conditions below):

Compliance Determination Conditions: _____

Operational Limitations: _____

GENERAL COMMENTS: : _____

CERTIFIED MAIL

U.S. Environmental Protection Agency
Region 6
Attention: Evelyn Rosborough (6WQ-CA)
1445 Ross Avenue
Dallas, Texas 75202

**Re: TPDES Draft Permit No. WQ0004122000
TX0071081, RN102806189, CN603263773**

Dear Ms. Rosborough:

Enclosed are the draft permit and Statement of Basis/Technical Summary and Executive Director's Preliminary Decision for the above referenced permit as required under the TCEQ/EPA Memorandum of Agreement. Please review and provide any written comments, objections (general or interim) or recommendations with respect to the draft permit within forty-five days from receipt of this draft permit to my attention.

If you need additional information or have any questions, please contact Mr. Samuel Trevino of my staff by telephone at (512) 239-0266, by E-mail at strevino@tceq.state.tx.us, by fax at (512) 239-4430 or if by correspondence, include MC 148 in the letterhead address following the Permit Writer's name. Thank you for your cooperation in this matter.

Sincerely,

Yvonna Miramontes, Team Leader
Industrial Permits Team
Water Quality Division

YM/st

Enclosures

Mr. Joel Palin
Luminant Power, Environmental Services
500 North Akard Street, LP12-080B
Dallas, Texas 75201

Re: Luminant Mining Company LLC
Proposed TPDES Permit No. WQ0004122000, EPA ID No. TX0071081
(RN102806189), (CN603263773)

Dear Mr. Palin:

Enclosed for your review and comment is a copy of a draft proposed permit for the above-referenced operation. This draft is subject to further staff review and modification; however, we believe it generally includes the terms and conditions that are appropriate to your discharge. **Please read the entire draft carefully as there are changes from the existing permit.** Also enclosed for your review and comment is a copy of the draft second notice, the Notice of Application and Preliminary Decision. Please provide comments if there are any inaccuracies or any information that is not consistent with your application. After the draft permit is filed with the Office of the Chief Clerk, you will receive instructions for publishing this notice in a newspaper and/or the notice will be published in the *Texas Register*.

Please read the enclosed "Draft Permit Form" and submit your comments prior to the deadline that is indicated by the form. If your comments are not received by the deadline, the draft permit will be transferred to the Chief Clerk's office and comments received after this date will not be considered. Please see the enclosed form for further details.

If you have comments or questions, please contact me prior to the "Draft Permit Form" deadline at (512) 239-0266, by E-mail at strevino@tceq.state.tx.us, or if by correspondence, include MC 148 in the letterhead address following my name.

Sincerely,

Samuel Trevino
Wastewater Permitting Section
Water Quality Division

ST

Enclosure
cc: TCEQ Region 5



TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

P.O Box 13087
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES

under provisions of

Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Luminant Mining Company LLC

whose mailing address is

500 North Akard Street, LP12-080B
Dallas, Texas 75201

is authorized to treat and discharge wastes from Monticello-Thermo Lignite Mining Area
(SIC 1221)

located on State Highway 11, approximately 2.5 miles southeast of the intersection of State
Highway 11 and Interstate Highway 30, Hopkins County, Texas

to an unnamed tributary; thence to Rock Creek; thence to White Oak Creek; thence to
Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin

only according to effluent limitations, monitoring requirements and other conditions set
forth in this permit, as well as the rules of the Texas Commission on Environmental Quality
(TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this
permit does not grant to the permittee the right to use private or public property for
conveyance of wastewater along the discharge route described in this permit. This includes,
but is not limited to, property belonging to any individual, partnership, corporation, or other
entity. Neither does this permit authorize any invasion of personal rights nor any violation of
federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire
property rights as may be necessary to use the discharge route.

This permit shall expire at midnight on January 1, 2016.

ISSUED DATE:

TPDES PERMIT NO.
WQ0004122000
*[For TCEQ office use only -
EPA I.D. No. TX0071081]*

This major amendment
supersedes and replaces
TPDES Permit No.
WQ0004122000 issued on
March 31, 2009.

For the Commission

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR WATER QUALITY TPDES PERMIT AMENDMENT FOR INDUSTRIAL WASTEWATER

TPDES Permit No. WQ0004122000

APPLICATION AND PRELIMINARY DECISION. Luminant Mining Company LLC, 500 North Akard Street, LP12-080B, Dallas, Texas 75201, which operates Monticello-Thermo Lignite Mining Area, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0004122000 to authorize the addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the existing Northern Boundary of the Monticello-Thermo Lignite Mining Area. The current permit authorizes the discharge of mine drainage and surface runoff from the active mining area, groundwater, and previously monitored effluents (surface runoff from post mining areas and previously monitored Outfall 001 effluent on an intermittent and flow variable basis via Outfall 101 and treated domestic wastewater at a daily average flow not to exceed 2,600 gallons per day via Outfall 201) on an intermittent and flow variable basis via Outfall 001. This application was submitted to the TCEQ on June 30, 2010.

The facility is located on State Highway 11, approximately 2.5 miles southeast of the intersection of State Highway 11 and Interstate Highway 30, Hopkins County, Texas 75482. The effluent is discharged to an unnamed tributary; thence to Rock Creek; thence to White Oak Creek; thence to Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin. The unclassified receiving waters have limited aquatic life use for the unnamed tributary and intermediate aquatic life use for Rock Creek. The designated uses for Segment No. 0303 are high aquatic life use and contact recreation.

In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Rock Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit

application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Hopkins County Clerk's Office, 128 Jefferson Street, Suite C, Sulphur Springs, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name; address; phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are germane to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html within 30 days from the date of newspaper publication of this notice.

AGENCY CONTACTS AND INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Luminant Mining Company LLC at the address stated above or by calling Mr. Joel Palin at (214) 875-9127.

Issued:

Agenda Caption (save to I:/EVERYONEwq/caption/WQ0004122000 with no filename extension):

Luminant Mining Company LLC, which operates Monticello-Thermo Lignite Mining Area, has applied for a major amendment to TPDES Permit No. WQ0004122000 to authorize the addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the existing Northern Boundary of the Monticello-Thermo Lignite Mining Area. The current permit authorizes the discharge of mine drainage and surface runoff from the active mining area, groundwater, and previously monitored effluents (surface runoff from post mining areas and previously monitored Outfall 001 effluent on an intermittent and flow variable basis via Outfall 101 and treated domestic wastewater at a daily average flow not to exceed 2,600 gallons per day via Outfall 201) on an intermittent and flow variable basis via Outfall 001. The facility is located on State Highway 11, approximately 2.5 miles southeast of the intersection of State Highway 11 and Interstate Highway 30, Hopkins County, Texas 75482.

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge mine drainage and surface runoff from the active mining area (*1), groundwater, and previously monitored effluents from Outfalls 101 and 201 subject to the following effluent limitations:

Volume: Intermittent and flow variable.

Effluent Characteristics	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Average mg/L	Daily Maximum mg/L	Single Grab mg/L	Report Daily Average and Daily Maximum Measurement Frequency	Sample Type
Flow (MGD)	(Report)	(Report)	N/A	1/week (*2)	Estimate
Total Suspended Solids	35	70	70	1/week (*2)	Grab (*3)
Total Iron	3.0	6.0	6.0	1/week (*2)	Grab (*3)
Total Selenium	N/A	0.036	0.036	1/6 months (*2)	Grab (*3)

(*1) See Other Requirement Nos. 1, 2, and 3.

(*2) When discharging.

(*3) Since more than one source is associated with this particular waste category, individual samples from each source (See Other Requirement No. 12) shall be analyzed and then arithmetically flow-weighted for reporting compliance with the above effluent limitations. For pH, individual samples shall be analyzed separately and the highest and lowest pH shall be reported.

2. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week (*2) by grab sample (*3).
3. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
4. Effluent monitoring samples shall be taken at the following location: At Outfall 001, at the outlet of the sedimentation ponds prior to routing to the tributaries of Rock Creek and to Rock Creek, or routing to post mining sedimentation ponds.

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 101

1. During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge surface runoff from post mining areas (*1) and previously monitored effluents from Outfall 001 subject to the following effluent limitations:

Volume: Intermittent and flow variable.

Effluent Characteristics	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Average mg/L	Daily Maximum mg/L	Single Grab mg/L	Report Daily Average and Daily Maximum Measurement Frequency	Daily Maximum Sample Type
Flow (MGD)	(Report)	(Report)	N/A	1/week (*2)	Estimate
Settleable Solids (mg/L)	N/A	(0.5)(*4)	(0.5)(*4)	1/week (*2)	Grab (*3)
Total Aluminum	N/A	Report	N/A	1/month (*2)	Grab (*3)

(*1) See Other Requirement Nos. 1, 2, and 3.

(*2) When discharge occurs.

(*3) Since more than one source is associated with this particular waste category, individual samples from each source (See Other Requirements No. 12) shall be analyzed and then arithmetically flow-weighted for reporting compliance with the above effluent limitations. For pH, individual samples shall be analyzed separately and the highest and lowest pH shall be reported.

(*4) This limit does not apply when the discharge is caused by a precipitation event (or series of storms or snowmelt equivalent volume) greater than the 10-year/24-hour precipitation event.

2. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week (*2) by grab sample (*3).
3. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
4. Effluent monitoring samples shall be taken at the following location: At Outfall 101, at the outlet of the sedimentation ponds prior to routing to the tributaries of Rock Creek or Rock Creek.

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 201

1. During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge treated domestic wastewater subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.0026 million gallons per day (MGD). The daily maximum flow shall not exceed 0.005 MGD.

Effluent Characteristics	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Average lbs/day	mg/L	Daily Maximum mg/L	Single Grab mg/L	Report Daily Average and Daily Maximum Measurement Frequency Sample Type
Flow (MGD)	(Report)		(Report)	N/A	5/week Instantaneous
Total Suspended Solids	0.43	20	45	45	1/week Grab
Biochemical Oxygen Demand (5-day)	0.43	20	45	45	1/week Grab

2. The daily average Dissolved Oxygen shall not be less than 2.0 mg/L. The permittee shall monitor the minimum Dissolved Oxygen 1/week by grab sample.
3. The effluent shall contain chlorine residual of at least 1.0 mg/l and a maximum chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored 5/week, by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
4. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week by grab sample.
5. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
6. Effluent monitoring samples shall be taken at the following location: At Outfall 201, at the exit from the final treatment unit.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC §§305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in Texas Water Code §26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder, and limited to major domestic wastewater discharge facilities with a one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
 - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.
 - ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day.

The "daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

- e. Bacteria concentration (Fecal coliform, E. coli, or Enterococci) - the number of colonies of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the nth root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substitute value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
 - f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
 - g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
3. Sample Type
- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (b).
 - b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.

5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge that is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act; TCW Chapters 26, 27, and 28; and THSC Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.

b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

3. Records of Results

a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.

c. Records of monitoring activities shall include the following:

- i. date, time, and place of sample or measurement;
- ii. identity of individual who collected the sample or made the measurement.
- iii. date and time of analysis;

- iv. identity of the individual and laboratory who performed the analysis;
- v. the technique or method of analysis; and
- vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

7. Noncompliance Notification

- a. In accordance with 30 TAC §305.125(9) any noncompliance that may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
 - i. Unauthorized discharges as defined in Permit Condition 2(g).
 - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
 - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.

- c. In addition to the above, any effluent violation that deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
 - d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.
9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. One hundred micrograms per liter (100 µg/L);
 - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. Five hundred micrograms per liter (500 µg/L);
 - ii. One milligram per liter (1 mg/L) for antimony;
 - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC §305.128 (relating to Signatories to Reports).

11. All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Executive Director of the following:
- a. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to CWA §301 or §306 if it were directly discharging those pollutants;
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and

- c. For the purpose of this paragraph, adequate notice shall include information on:
- i. The quality and quantity of effluent introduced into the POTW; and
 - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
 - i. Violation of any terms or conditions of this permit;
 - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
or
 - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§305.62 and 305.66 and TWC §7.302. The filing of a request by the

permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC §305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility that does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code §§7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA § 402, or any requirement imposed in a pretreatment program approved under the CWA §§402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

- a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC Chapter 361.
- b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC §7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
 - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC §305.534 (relating to New Sources and New Dischargers); or

- ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;
 - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
 - c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
 - d. Prior to accepting or generating wastes that are not described in the permit application or that would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
 - e. In accordance with the TWC §26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
 - f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA §307(a) for a toxic pollutant that is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under CWA §307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.
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- b. A permit may be transferred only according to the provisions of 30 TAC §305.64 (relating to Transfer of Permits) and 30 TAC §50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal that requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to Texas Water Code Chapter 11.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

a. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

- i. the permittee;
- ii. an entity (as that term is defined in 11 USC, §101(15)) controlling the permittee or listing the permit or permittee as property of the estate; or
- iii. an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.

b. This notification must indicate:

- i. the name of the permittee;
- ii. the permit number(s);
- iii. the bankruptcy court in which the petition for bankruptcy was filed; and
- iv. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.

2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§319.21 - 319.29 concerning the discharge of certain hazardous metals.
3. Domestic wastewater treatment facilities shall comply with the following provisions:
 - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
 - b. The permittee shall submit a closure plan for review and approval to the Land Application Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.
5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC §7.302(b)(6).
7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.
 - a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the

flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility that reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission, and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.
 - c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
 10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.
 11. Facilities that generate industrial solid waste as defined in 30 TAC §335.1 shall comply with these provisions:
 - a. Any solid waste, as defined in 30 TAC §335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
 - b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source

discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.

- c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC §335.8(b)(1), to the Corrective Action Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
- d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC §335.5.
- e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
- f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:
 - i. Volume of waste and date(s) generated from treatment process;
 - ii. Volume of waste disposed of on-site or shipped off-site;
 - iii. Date(s) of disposal;
 - iv. Identity of hauler or transporter;
 - v. Location of disposal site; and
 - vi. Method of final disposal.

The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

- 12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC Code Chapter 361.

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OTHER REQUIREMENTS**1. Definitions**

The term "active mining area" is defined as the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. The term excludes coal preparation plants, coal preparation plant associated areas, and post-mining areas.

The term "post mining areas" is defined as a reclamation area or the underground working of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

The term "reclamation area" is defined as the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

The term "bond release" is defined as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of an underground mine, mine sealing and abandonment procedures) has been satisfactorily completed in accordance with Phase II as defined by 16 TAC § 12.313(a)(2).

The term "10-year, 24-hour precipitation event" shall mean a precipitation event with the probable reoccurrence interval of once in ten years as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

The term "settleable solids" is that matter measured by the volumetric method specified in 40 CFR § 434.64.

The term "mine drainage" means drainage, and any water that is pumped or siphoned, from an active mining area or post mining area.

2. Outfall 001 represents the discharge from various retention ponds in the respective "active mining areas" which contain storm water or water pumped from the lignite mine pits and from groundwater discharges. The discharge flows from the retention ponds into the on-channel pond or to unnamed tributaries of Rock Creek or to Rock Creek; thence to White Oak Creek; thence to the Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin.

All retention ponds shall be constructed prior to disturbing the natural soils in preparation for mining activity. As each discharge point is developed, the TCEQ, Industrial Permits, Wastewater Permitting Section (MC-148) and Region 5 Office shall be notified.

Notifications under this provision shall include a list of all ponds and a map of the mine site which shows the location and drainage areas of all ponds in the "active mining areas" and "post mining areas." The site shall maintain a record of the design dimensions and

construction information for each pond. The map and pond list shall be maintained at the mine site and be available to the TCEQ personnel upon request.

Pond locations may be revised by the permittee if it becomes necessary to eliminate or establish new holding ponds.

The following table shows the mine area, the operational phase, the related outfalls and the receiving waters and tributaries, at the time of permit issuance:

Outfall Number	Mining Phase	Pond Identification Number	Receiving Water	Segment No.
001	Active	AI-1, AI-2, B-17, F-01, A-18, C-05, and C-06	Rock Creek	0303
101	Post	NPW B-17	Rock Creek	0303

3. Provisions based on 40 CFR 434, Subpart F (provisions concerning acid or ferruginous drainage is not applicable as the Monticello-Thermo Lignite Mining Area exhibits alkaline drainage as defined by 40 CFR § 434.11 (c). Any discharge or increase in the volume of a discharge caused by precipitation or during precipitation shall be analyzed and reported as a single grab sample for compliance with the following effluent limitations.

a. Outfall 001 (Alkaline Mine Drainage)

- i. Effluent discharges from an active mining area caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event, shall not exceed the following limitations:

<u>Pollutant</u>	<u>Effluent Limitations</u>
Settleable Solids	0.5 ml/l maximum not to be exceeded
pH, standard units, SU	6.0 SU minimum to 9.0 SU maximum at all times

- ii. Effluent discharges from an active mining area caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event, shall not exceed the following limitations:

<u>Pollutant</u>	<u>Effluent Limitations</u>
pH, standard units, SU	6.0 SU minimum to 9.0 SU maximum at all times

b. Outfalls 101 (Post-Mining Areas)

- i. Effluent discharges from Post-Mining Areas caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event, shall not exceed the following limitations:

<u>Pollutant</u>	<u>Effluent Limitations</u>
pH, standard units, SU	6.0 SU minimum to 9.0 SU maximum at all times

- c. The permittee bears the burden of proof in establishing the volume of a precipitation event.
4. All discharges from Outfalls 001 and 101 shall comply with the limitations for hazardous metals as regulated under Title 30, Texas Administrative Code (TAC) Chapter 319, Subchapter B "Hazardous Metals."
5. Discharges from the retention ponds shall be monitored in accordance with this permit from the time the natural soils are disturbed until reclamation of the disturbed soils is complete and until the performance bond (Phase Two) issued by the appropriate authority has been released. Notify TCEQ at least 10 days prior to transferring a pond classification from an active mining designation to a post mining designation or closure of any retention pond and discontinuing monitoring, notification shall be sent to the TCEQ Application Review and Processing Team (MC-148) and Region 5 Offices shall be notified in writing of the permittee's intent.
6. The permittee shall conduct effluent sampling and reporting in accordance with 30 TAC 319.4-319.7. A monthly effluent report must be submitted each month by the 25th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Knowingly making any false statement on any such report may result in the imposition of criminal and/or civil penalties as provided by State law.

This provision supersedes and replaces MONITORING AND REPORTING REQUIREMENTS, 1. Self-Reporting, as defined on Page 4 of this permit.

7. Monitoring results shall be provided at the intervals specified in the permit. For pollutants which are monitored annually, effluent reports shall be submitted in September of each year. For pollutants which are monitored twice per year, the first effluent report shall be submitted six months after the date of permit issuance and subsequent reports every six months thereafter. For a pollutant which is required to be monitored 1/6 months, the six-month periods are defined as January through June and July through December. A minimum of one discharge shall be monitored for the pollutant(s) during each six month period, provided there is a discharge via the outfall during said period. For pollutants which are monitored four times per year, the first effluent report shall be submitted three months after the date of permit issuance and subsequent reports every three months thereafter.
8. Water from the active mining and post mining sedimentation ponds may be used for dust suppression.
9. Violations of daily maximum limitations for the following pollutants shall be reported orally or by facsimile to TCEQ Region 5, within 24 hours from the time the permittee becomes aware of the violation followed by a written report within five working days to TCEQ Region 5 and the Enforcement Division (MC 224):

<u>POLLUTANT</u>	<u>MAL (mg/l)</u>
Total Aluminum	0.030
Total Selenium	0.010
Settleable Solids	0.4 ml/l

Test methods utilized shall be sensitive enough to demonstrate compliance with the permit effluent limitations. Permit compliance/noncompliance determinations will be based on the effluent limitations contained in this permit with consideration given to the minimum analytical level (MAL) for the parameters specified above.

10. This requirement is applicable to the treatment and disposal of domestic wastewater at Outfall 201.

On-site disposal of sewage sludge is not authorized. The permittee shall ensure that all sewage sludge which is not a hazardous waste (as defined in 30 TAC Chapter 335) is handled, transported, and disposed of in compliance with the applicable provisions of 30 TAC Chapter 312. The permittee shall ensure that all sewage sludge which is a hazardous waste (as defined in 30 TAC Chapter 335) is handled, transported, and disposed of in compliance with the applicable provisions of 30 TAC Chapter 335. The permittee shall keep records of all sludges removed from the wastewater treatment plant site. Such records will include the following information:

- a. Volume (dry weight basis) of sludge disposed
- b. Date of disposal
- c. Identity and registration number of hauler
- d. Location and registration or permit number of disposal site
- e. Method of final disposal

The above records shall be maintained on a monthly basis and be available at the plant site for inspection by authorized representatives of the TCEQ for at least five years.

11. There is no mixing zone established for this discharge to an intermittent stream. Acute toxic criteria apply at the point of discharge.
12. Additional Monitoring and Reporting Requirements for Retention Ponds Regulated by 40 CFR Part 434.

a. Sampling Requirements

In addition to the reporting required under this permit at pages 2 and 2a the permittee shall sample and analyze each effluent discharge at a once per two week basis for active mining area ponds and once per month for post mining areas.

Analysis shall be conducted for effluent discharged from each retention pond constructed and operated under this permit, except for:

- i. effluent discharge from retention ponds in a series, which shall be sampled at a point from the last pond in the series; and
- ~~ii. effluent discharges from multiple retention ponds commingled in a pipe or a man-made conveyance structure before discharging into waters in the state, which shall be sampled at a point prior to mixing with other waters.~~

Sampling is not required for those retention ponds which had no effluent discharge during the two week period for active and monthly period for post mining areas.

The analytical results from the routine monitoring required on pages 2 through 2a may be used to fulfill the requirements of this provision provided the results are obtained from each individual pond discharge as required by this provision.

- b. Effluent Limitations for Acid or Ferruginous Active Mining Areas (N/A)
- c. Effluent Limitations for Alkaline Active Mining Areas (40 CFR Part 434, Subparts D and F)

- i. Effluent discharges from an active mining area **not caused by precipitation** within any 24-hour period, shall not exceed the following limitations:

<u>Pollutant</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Total Iron	3.5 mg/l	7.0 mg/l
Total Suspended Solids	35 mg/l	70 mg/l
pH (standard units, SU)	(6.0 SU minimum - 9.0 SU maximum at all times)	

- ii. Effluent discharges from an active mining area caused by precipitation within any 24 hour period **less than or equal to the 10-year, 24-hour precipitation event**, shall not exceed the following limitations:

<u>Pollutant</u>	<u>Effluent Limitations</u>
Settleable Solids	0.5 ml/l maximum not to be exceeded
pH (standard units, SU)	(6.0 SU minimum - 9.0 SU maximum at all times)

- iii. Effluent discharges from an active mining area caused by precipitation within any 24-hour period **greater than the 10-year, 24-hour precipitation event**, shall not exceed the following limitations:

<u>Pollutant</u>	<u>Effluent Limitations</u>
pH (standard units, SU)	(6.0 SU minimum - 9.0 SU maximum at all times)

- d. Effluent Limitations for Post Mining Areas (40 CFR Part 434, Subparts E and F)

- i. Effluent discharges from Post-Mining Areas **not caused by precipitation**, shall not exceed the following limitations:

<u>Pollutant</u>	<u>Effluent Limitations</u>
Settleable Solids	0.5 ml/l maximum not to be exceeded
pH (standard units, SU)	(6.0 SU minimum - 9.0 SU maximum at all times)

- ii. Effluent discharges from Post-Mining Areas within any 24-hour period **greater than the 10-year, 24-hour precipitation event**, shall not exceed the following limitations:

<u>Pollutant</u>	<u>Effluent Limitations</u>
pH (standard units, SU)	(6.0 SU minimum - 9.0 SU maximum at all times)

- e. The permittee bears the burden of proof in establishing the volume of a precipitation event.

f. Retention Pond Sampling Plan

The permittee shall prepare and maintain onsite, readily available for inspection by TCEQ staff, a Retention Pond Sampling Plan that shows all of the retention pond effluent discharge sampling locations along with the designated outfall number associated with each sampling location. This sampling plan shall be updated as necessary to show retention ponds that come in and out of service.

g. Sampling Reporting Requirement

On or before the end of January, April, July, and October; the permittee shall submit the effluent discharge monitoring data collected for the prior calendar quarter pursuant to this monitoring and reporting requirement to the TCEQ Enforcement Division (MC-224) and the Region 5 Office. The effluent discharge monitoring data reported the preceding two years shall be submitted by the permittee as an attachment to all permit renewal and amendment applications.

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DESCRIPTION OF APPLICATION

Applicant: Luminant Mining Company LLC; Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004122000, (TX0071081).

Regulated Activity: Industrial Wastewater Permit.

Type of Application: Major Amendment.

Request: Major Amendment with Renewal to authorize the addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the Northern Boundary of the Monticello-Thermo Lignite Mining Area.

Authority: Federal Clean Water Act §402; Texas Water Code §26.027; 30 Texas Administrative Code (TAC) Chapter 305, Subchapters C-F, Chapters 307 and 319, Commission Policies; and EPA Guidelines.

EXECUTIVE DIRECTOR RECOMMENDATION

The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. It is proposed the permit be issued to expire on January 1, 2016 in accordance with 30 TAC §305.71, Basin Permitting.

REASON FOR PROJECT PROPOSED

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment of its existing permit. The proposed major amendment would authorize the addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the Northern Boundary of the Monticello-Thermo Lignite Mining Area.

PROJECT DESCRIPTION AND LOCATION

The applicant operates the Monticello-Thermo Lignite Mining Area, a surface coal mine. Mine pit and surface water runoff from active mining areas and groundwater discharge are routed to active mining sedimentation ponds prior to discharge via Outfall 001. The facility reports a polyelectrolyte may be added to the wastewaters to facilitate settling of solids.

Mine pit and surface water runoff from post mining areas and groundwater discharge are routed to post mining sedimentation pond(s) prior to discharge via Outfall 101. The facility reports a polyelectrolyte may be added to the wastewaters to facilitate settling of solids. Outfall 001 effluent may also be routed through these ponds and discharged.

Potable water is supplied by the City of Sulphur Springs Water Supply. Sanitary wastewater generated at the coal loading station is routed for treatment by extended aeration, clarification and disinfection by chlorine. Solids are aerobically digested and hauled to the City of Paris wastewater treatment facilities. The pretreated sanitary wastewaters are discharged via Outfall 201 are commingled with active mining related wastewaters for discharge via Outfall 001.

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The plant site is located on State Highway 11, approximately 2.5 miles southeast of the intersection of State Highway 11 and Interstate Highway 30, Hopkins County, Texas.

The effluent is discharged to an unnamed tributary; thence to Rock Creek; thence to White Oak Creek; thence to Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin. The unclassified receiving waters have limited aquatic life use for the unnamed tributary and intermediate aquatic life use for Rock Creek. The designated uses for Segment No. 0303 are high aquatic life use and contact recreation. The effluent limits in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and/or revisions.

In accordance with 30 TAC § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Rock Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

The unclassified water body, White Oak Creek (0303B), is currently listed on the State's inventory of impaired and threatened waters, the 2008 303(d) list. The listing is specifically for bacteria and depressed dissolved oxygen. The impairment for bacteria is in the upper 25 miles of the water body (AU 0303B_03). The impairment for dissolved oxygen is throughout the water body: the lower 25 miles (AU 0303B_01); the middle 25 miles near Hwy 271 (AU 0303B_02); and the upper 25 miles (AU 0303B_03). The effluent limits recommended above are based on model analyses that are conservatively structured to assure that point source discharges are unlikely to cause unacceptable dissolved oxygen conditions in the receiving waters, including the impaired reaches of White Oak Bayou. Impacts from this discharge are predicted to be confined to the immediate receiving stream, the unnamed tributary, and not White Oak Bayou (AU 0303B_02).

Based on model results, the existing effluent set of 20 mg/L BOD₅ and 2 mg/L dissolved oxygen (DO), modeled with 12 mg/L NH₃-N, is adequate to ensure that the DO level will be maintained above the 3.0 mg/L DO criterion of the unnamed tributary.

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This facility is designed to provide adequate disinfection of domestic wastewater and should not add to the bacterial impairment of the segment.

There are no approved Total Maximum Daily Load documents or reports for the Sulphur/South Sulphur River (Segment 0303).

A Waste Load Evaluation (WLE) has been prepared for Segment 0303. This discharge is consistent with the *Waste Load Evaluation for the Sulphur/South Sulphur, North Sulphur, and Upper South Sulphur Rivers in the Sulphur River Basin*, Segments 0303, 0305, and 0306 (1990).

SUMMARY OF EFFLUENT DATA

The following is a quantitative description of the discharge described in the Monthly Effluent Report data for the period June 2005 through August 2010. The "Average of Daily Avg" values presented in the following table are the average of all daily average values for the reporting period for each parameter. The "Maximum of Daily Max" values presented in the following table are the individual maximum values for the reporting period for each parameter:

Flow

<u>Outfall</u>	<u>Frequency</u>	<u>Average of Daily Average (MGD)</u>	<u>Maximum of Daily Maximum (MGD)</u>
001	1/week (*1)	10.84	156
101	1/week (*1)	15.11	220
201	5/week	0.001	0.004

(*1) When discharging.

Effluent Characteristics

<u>Outfall</u>	<u>Parameter</u>	<u>Average of Daily Average, mg/L</u>	<u>Maximum of Daily Maximum, mg/L</u>
001	Total Suspended Solids	7.67	29.0
	Total Iron	0.33	3.0
	Total Selenium	N/A	0.01
	pH (standard units)	(6.0 min)	(8.6 max)
101	Settleable Solids	N/A	0.1
	Total Aluminum	N/A	0.6
	pH (standard units)	(6.3 min)	(8.1 max)
201	Total Suspended Solids	4.10 [0.001 lbs/day]	19
	Biochemical Oxygen	4.41 [0.001 lbs/day]	23
	Demand (5-day)		

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<u>Outfall</u>	<u>Parameter</u>	<u>Average of Daily Average, mg/L</u>	<u>Maximum of Daily Maximum, mg/L</u>
201 (cont)	Minimum Dissolved Oxygen	N/A	3.0
	Total Residual Chlorine	(1.0 min)	(4.0 max)
	pH (standard units)	(6.0 min)	(7.7 max)

Based on a review of the EPA's Integrated Compliance Information System (ICIS) data summarized above, the facility had no exceedences.

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of mine drainage and surface runoff from the active mining area, groundwater, and previously monitored effluent via Outfall 001 on an intermittent and flow variable basis, surface runoff from post mining areas and previously monitored effluent from Outfall 001 via Outfall 101 on an intermittent and flow variable basis, and treated domestic wastewater via Outfall 201 at a daily average flow not to exceed 0.0026 MGD.

Final effluent limitations are established in the draft permit as follows:

<u>Outfall Number</u>	<u>Parameter</u>	<u>Daily Average, mg/L</u>	<u>Daily Maximum, mg/L</u>
001	Flow (MGD)	(Report)	(Report)
	Total Suspended Solids (TSS)	35	70
	Total Iron	3.0	6.0
	Total Selenium	N/A	0.036
	pH (standard units)	(6.0 min - 9.0 max)	
101	Flow (MGD)	(Report)	(Report)
	Settleable Solids (ml/l)	N/A	(0.5)
	Total Aluminum	N/A	(Report)
	pH (standard units)	(6.0 min - 9.0 max)	
201	Flow (MGD)	(0.0026)	(0.005)
	BOD ₅	20 [0.43 lbs/day]	45
	TSS	20 [0.43 lbs/day]	45
	Minimum DO	2.0	N/A
	Total Residual Chlorine	(1.0 min - 4.0 max)	
	pH (standard units)	(6.0 min - 9.0 max)	

Regulations promulgated in Title 40 of the Code of Federal Regulations require technology-based limitations be placed in wastewater discharge permits based on effluent limitations guidelines, where applicable, and on best professional judgment (BPJ) in the absence of guidelines. 40 CFR Part 434 Coal Mining Point Source Category, Subparts D, E, and F apply.

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Subpart C applies to acid or ferruginous¹ mine drainage², Subpart D to alkaline³ mine drainage, and Subpart E to post mining areas. An "active mining area" means the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes post-mining areas.

The current permit application indicates that facility operations commenced around 1974-1975 for 40 CFR 434 Subpart D and October 1999 for 40 CFR Subpart E. The previous application for permit renewal indicated that mine drainage is alkaline and that the mining activities/discharges commenced in April 1985, which established that Subpart D applies to the active mining related discharges via Outfall 001. A "new source coal mine" is defined in 40 CFR §434.11(j)(1) as a coal mine where construction commenced after May 4, 1984. Therefore, the facility meets the definition of a new source and new source performance standards at Subpart D are being applied to Outfall 001, resulting in limits for total iron that are continued from the current permit. New source performance standards at Subpart E apply to the post mining area discharges. 40 CFR Part 434, Subpart F - Miscellaneous Provisions also applies. Please see Appendix A for a more detailed discussion of technology-based effluent limitations.

To comply with 40 CFR Part 434 each individual settling pond was considered a point source for meeting the applicable effluent guidelines. Therefore, the draft permit shall continue to require that the permittee sample and analyze at a minimum frequency of once per two weeks for active mining area ponds and once per month for post mining area ponds. The permittee shall monitor the effluent discharge from each retention pond constructed and operated under this permit, except for: (a) effluent discharges from retention ponds in a series, which shall be sampled at a point from the last pond in the series; and (b) effluent discharges from multiple retention ponds commingled in a pipe or a man-made conveyance structure before discharging into waters of the state, which shall be sampled at a point prior to mixing with other waters. The permittee shall submit the effluent discharge monitoring data collected for the prior calendar quarter pursuant to the monitoring and reporting requirement to the TCEQ Enforcement Division and to the TCEQ Region 5 office. The effluent discharge monitoring data reported the preceding two years shall be submitted by the permittee as an attachment to all permit renewal and amendment applications. Selenium at Outfall 001, aluminum at Outfall 101, and DO at Outfall 201 are based on BPJ and are continued from the existing permit.

Water quality-based effluent limitations for the protection of aquatic life are presented at Appendix A. Aquatic life criteria established in Tables 1 and 3 of 30 TAC 307 are incorporated into the menu as well as recommend by the Water Quality Assessment Section memorandum dated October 14, 2010. TCEQ practice for determining significant potential is to compare the reported analytical data from the facility against percentages of the calculated daily average water quality-based effluent limitation. Permit limitations are required when analytical data reported in the application exceeds 85 percent of the calculated daily average water quality-based effluent

¹ Mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or greater than 10 mg/l.

² "Mine drainage"-means any drainage; and any water pumped or siphoned, from an active mining area or a post-mining area.

³ Mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/l.

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limitation. Monitoring and reporting is required when analytical data reported in the application exceeds 70 percent of the calculated daily average water quality-based effluent limitation. Data submitted with the application was screened and no limits are required.

SUMMARY OF CHANGES FROM APPLICATION

No changes were made from the application.

See the next section for changes to the existing permit.

SUMMARY OF CHANGES FROM EXISTING PERMIT

The permittee requested the following changes in its major amendment request that the Executive Director has recommended granting.

- Authorization of the addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the existing Monticello-Thermo Lignite Mining Area boundary to the north; and
- the new retention ponds AI-1 and AI-2 have been included in Other Requirement No. 2 on page 16 of the draft permit.

The following additional changes have been made to the draft permit:

- the standard permit conditions have been updated;
- the discharge route has been updated; and
- Other Requirement No. 5 has been removed as no longer necessary.

BASIS FOR PROPOSED DRAFT PERMIT

The following items were considered in developing the proposed permit draft:

1. Application received June 30, 2010.
2. Existing permit: TPDES Permit No. WQ0004122000 issued March 31, 2009.
3. Waste Load Allocation/Evaluation for Segment No. 0303.
4. TCEQ Rules.
5. Texas Surface Water Quality Standards - 30 TAC §§307.1-307.10, effective August 17, 2000, and Appendix E, effective February 27, 2002.
6. "Procedures to Implement the Texas Surface Water Quality Standards," Texas Commission on Environmental Quality, January 2003.
7. Memos from the Water Quality Standards Team and the Water Quality Assessment Team of the Water Quality Assessment Section of the TCEQ.
8. "Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits," TCEQ Document No. 98-001.000-OWR-WQ, May 1998.
9. EPA Effluent Guidelines: 40 CFR Part 434, Subparts D, E, and F. A new source determination was performed and the discharge of active mine drainage and post mining area waters is a new source as defined at 40 CFR Section 122.2.
10. Consistency with the Coastal Management Plan: N/A

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PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application, and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the technical summary or fact sheet, to the Chief Clerk. At that time, Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application.

Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding. After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's Response to Comments and Final Decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's Response to Comments and Final Decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application, contact Samuel Trevino at (512) 239-0266.

Samuel Trevino

Date

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APPENDIX A
CALCULATED TECHNOLOGY BASED EFFLUENT LIMITATIONS

40 CFR Part 434, Subpart D - Alkaline Mine Drainage, Outfall 001

The provisions of this subpart are applicable to alkaline mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite. Except as provided for at 40 CFR §§434.61 and 434.63, the following new source performance standards shall be achieved for any discharge from a new source subject to this subpart:

New Source Performance Standards, 40 CFR §434.45

<u>Parameter</u>	<u>Average for 30 Consecutive Days⁴</u>	<u>Daily Maximum</u>
Total Iron	3.0 mg/l	6.0 mg/l
Total Suspended Solids	35.0 mg/l	70.0 mg/l
pH	6.0-9.0 S.U.	

Since the facility previously indicated that it commenced operations/discharge in April 1985, which meets the definition of a new source (40 CFR §434.11(j)(1) defines a "new source coal mine" as a coal mine where construction commenced after May 4, 1984), new source performance standards are being continued in the draft permit.

40 CFR Part 434, Subpart E - Post Mining Areas, Outfall 101

The provisions of this subpart are applicable to discharges from post-mining areas, except as provided in Subpart H- Western Alkaline Coal Mining of this part. Except as provided in 40 CFR §§434.61 and 434.63 (d)(2), the following standards apply to reclamation areas at new source coal mines until SMCRA bond release:

New Source Performance Standards, 40 CFR §434.55(a)

<u>Parameter</u>	<u>Maximum</u>
Settleable Solids ⁵	0.5 ml/l
pH	6.0-9.0 S.U.

The standards are as stringent as those in the existing permit; no changes are proposed for these parameters at this outfall with this permit renewal.

⁴ It is TCEQ's practice to apply an "average for 30 consecutive day" limit as a daily average limit.

⁵ 40 CFR §434.64 Procedure and method detection limit for measurement of settleable solids. For the purposes of this part, the following procedure shall be used to determine settleable solids: Fill an Imhoff cone to the one-liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. Where a separation of settleable and floating materials occurs, do not include the floating material in the reading. Notwithstanding any provision of 40 CFR Part 136, the method detection limit for measuring settleable solids under this part shall be 0.4 ml/l.

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40 CFR Part 434, Subpart F - Miscellaneous Provisions

Per 40 CFR §434.63(a)(1), the following precipitation event limitations apply to surface alkaline mine drainage:

Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

40 CFR §434.63(a)(2)

<u>Parameter</u>	<u>Maximum</u>
Settleable Solids	0.5 ml/l
pH	6.0-9.0 S.U.

This existing permit allows for these alternate limits at Other Requirements No. 3; they are continued in the draft permit without changes.

Per 40 CFR §434.63(d)(1), the following precipitation event limitations apply to surface alkaline mine drainage and discharges from reclamation areas (i.e., post mining areas):

Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

40 CFR §434.63(d)(2)

<u>Parameter</u>	<u>Maximum</u>
pH	6.0-9.0 S.U.

This existing permit allows for these alternate limits; they are continued in the draft permit at Other Requirement No. 3.

Per 40 CFR §434.63(d)(e), the operator has the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described above. This condition is included in the existing permit and continued in the draft permit.

BPJ and Outfall 201

Secondary standards for biochemical oxygen demand, total suspended solids, dissolved oxygen, and pH established at 30 TAC §309.1(b) are equivalent to limits in the existing permit; no changes are proposed with the permit renewal. Total residual chlorine limitations are established as BPJ with consideration of 30 TAC 309.3(g)(3); no changes are proposed with the permit renewal.

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Appendix B
Calculated Water Quality-Based Effluent Limits

TEXT0X MENU #1 - INTERMITTENT STREAM

The water quality-based effluent limitations demonstrated below are calculated using:

Table 1, 2000 Texas Surface Water Quality Standards (30 TAC 307) for Freshwater Aquatic Life

Table 3, 2000 Texas Surface Water Quality Standards for Human Health

Procedures to Implement the Texas Surface Water Quality Standards, Texas Commission on Environmental Quality, January 2003

TPDES Permit No:	WQ0004122000
Permittee Name:	LUMINANT MINING COMPANY LLC
Outfall No:	001
Prepared By:	Sam Treviño
Date:	October 21, 2010

DISCHARGE INFORMATION:

Intermittent Receiving Waterbody:	unnamed tributary
Segment No:	0303
TSS (mg/L):	22
pH (Standard Units):	7.0
Hardness (mg/L as CaCO ₃):	79
Chloride (mg/L):	15
Effluent Flow for Aquatic Life (MGD):	50
Critical Low Flow [7Q2] (cfs):	0
Acute Effluent % for Aquatic Life:	100

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CALCULATE TOTAL/DISSOLVED RATIO:

<i>Stream/River Metal</i>	<i>Intercept (b)</i>	<i>Slope (m)</i>	<i>Partitioning Coefficient (Kpo)</i>	<i>Dissolved Fraction (Cd/Ct)</i>		<i>Water Effects Ratio (WER)</i>	
Aluminum	N/A	N/A	N/A	1.00	Assumed	1	Assumed
Arsenic	5.68	-0.73	50122.35	0.48		1	Assumed
Cadmium	6.6	-1.13	121077.20	0.27		1	Assumed
Chromium (Total)	6.52	-0.93	186873.15	0.20		1	Assumed
Chromium (+3)	6.52	-0.93	186873.15	0.20		1	Assumed
Chromium (+6)	N/A	N/A	N/A	1.00	Assumed	1	Assumed
Copper	6.02	-0.74	106318.10	0.30		1	Assumed
Lead	6.45	-0.8	237717.88	0.16		1	Assumed
Mercury	N/A	N/A	N/A	1.00	Assumed	1	Assumed
Nickel	5.69	-0.57	84104.47	0.35		1	Assumed
Selenium	N/A	N/A	N/A	1.00	Assumed	1	Assumed
Silver	6.38	-1.03	99381.29	0.31		1	Assumed
Zinc	6.1	-0.7	144645.23	0.24		1	Assumed

AQUATIC LIFE

CALCULATE DAILY AVERAGE AND DAILY MAXIMUM EFFLUENT LIMITATIONS

<i>Parameter</i>	<i>Acute Standard (ug/L)</i>	<i>WLAa</i>	<i>LTAa</i>	<i>Daily Avg. (ug/L)</i>	<i>Daily Max. (ug/L)</i>
Aldrin	3	3.00	1.72	2.53	5.35
Aluminum	991	991.00	567.84	834.73	1765.99
Arsenic	360	756.97	433.74	637.60	1348.94
Cadmium	25.128	92.06	52.75	77.54	164.05
Carbaryl	2	2.00	1.15	1.68	3.56
Chlordane	2.4	2.40	1.38	2.02	4.28
Chlorpyrifos	0.083	0.08	0.05	0.07	0.15
Chromium (+3)	452.40	2312.31	1324.95	1947.68	4120.60
Chromium (+6)	15.7	15.70	9.00	13.22	27.98
Copper	14.756	49.27	28.23	41.50	87.80

STATEMENT OF BASIS / TECHNICAL SUMMARY AND
EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
TPDES Permit No. WQ0004122000

<i>Parameter</i>	<i>Acute Standard</i> (ug/L)	<i>WLAa</i>	<i>LTAa</i>	<i>Daily</i> <i>Avg.</i> (ug/L)	<i>Daily</i> <i>Max.</i> (ug/L)
Cyanide	45.78	45.78	26.23	38.56	81.58
4,4'-DDT	1.1	1.10	0.63	0.93	1.96
Dementon	N/A	N/A	N/A	N/A	N/A
Dicofol	59.3	59.30	33.98	49.95	105.67
Dieldrin	2.5	2.50	1.43	2.11	4.46
Diuron	210	210.00	120.33	176.89	374.23
Endosulfan I (alpha)	0.22	0.22	0.13	0.19	0.39
Endosulfan II (beta)	0.22	0.22	0.13	0.19	0.39
Endosulfan sulfate	0.22	0.22	0.13	0.19	0.39
Endrin	0.18	0.18	0.10	0.15	0.32
Guthion	N/A	N/A	N/A	N/A	N/A
Heptachlor	0.52	0.52	0.30	0.44	0.93
Hexachlorocyclohexane (Lindane)	2	2.00	1.15	1.68	3.56
Lead	53.766	334.95	191.93	282.13	596.90
Malathion	N/A	N/A	N/A	N/A	N/A
Mercury	2.4	2.40	1.38	2.02	4.28
Methoxychlor	N/A	N/A	N/A	N/A	N/A
Mirex	N/A	N/A	N/A	N/A	N/A
Nickel	1159.508	3304.94	1893.73	2783.79	5889.51
Parathion (ethyl)	0.065	0.07	0.04	0.05	0.12
Pentachlorophenol	9.070252	9.07	5.20	7.64	16.16
Phenanthrene	30	30.00	17.19	25.27	53.46
Polychlorinated Biphenyls (PCBs)	2	2.00	1.15	1.68	3.56
Selenium	20	20.00	11.46	16.85	35.64
Silver, (free ion)	0.8	4.69	2.69	3.95	8.36
Toxaphene	0.78	0.78	0.45	0.66	1.39
Tributyltin (TBT)	0.13	0.13	0.07	0.11	0.23
2,4,5 Trichlorophenol	136	136.00	77.93	114.55	242.36

STATEMENT OF BASIS / TECHNICAL SUMMARY AND
EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
TPDES Permit No. WQ0004122000

<i>Parameter</i>	<i>Acute Standard</i> (ug/L)	<i>WL_{Aa}</i>	<i>LT_{Aa}</i>	<i>Daily</i> <i>Avg.</i> (ug/L)	<i>Daily</i> <i>Max.</i> (ug/L)
Zinc	93.727	391.99	224.61	330.17	698.53

CALCULATE 70% AND 85% OF DAILY AVERAGE EFFLUENT LIMITATIONS

<i>Parameter</i>	<i>70%</i>	<i>85%</i>
Aldrin	1.769	2.148
Aluminum	584.310	709.520
Arsenic	446.322	541.962
Cadmium	54.280	65.912
Carbaryl	1.179	1.432
Chlordane	1.415	1.718
Chlorpyrifos	0.049	0.059
Chromium (+3)	1363.38	1655.53
Chromium (+6)	9.257	11.241
Copper	29.051	35.276
Cyanide	26.993	32.777
4,4'-DDT	0.649	0.788
Dementon	N/A	N/A
Dicofol	34.964	42.457
Dieldrin	1.474	1.790
Diuron	123.820	150.352
Endosulfan I (alpha)	0.130	0.158
Endosulfan II (beta)	0.130	0.158
Endosulfan sulfate	0.130	0.158
Endrin	0.106	0.129
Guthion	N/A	N/A
Heptachlor	0.307	0.372
Hexachlorocyclohexane (Lindane)	1.179	1.432
Lead	197.494	239.815
Malathion	N/A	N/A

STATEMENT OF BASIS / TECHNICAL SUMMARY AND
EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
TPDES Permit No. WQ0004122000

Mercury	1.415	1.718
Methoxychlor	N/A	N/A
Mirex	N/A	N/A
Nickel	1948.65	2366.22
Parathion (ethyl)	0.038	0.047
Pentachlorophenol	5.348	6.494
Phenanthrene	17.689	21.479
Polychlorinated		
Biphenyls (PCBs)	1.179	1.432
Selenium	11.792	14.319
Silver, (free ion)	2.765	3.357
Toxaphene	0.460	0.558
Tributyltin (TBT)	0.077	0.093
2,4,5 Trichlorophenol	80.188	97.371
Zinc	231.121	280.647

PERMITTEE:	Luminant Mining Company LLC
TPDES PERMIT	
NUMBER:	WQ0004122000
CLASSIFIED SEGMENT:	
NAME:	Sulphur/South Sulphur River
NUMBER:	0303
COUNTY:	Hopkins

<u>no</u>	1.	This is a new permit application which would authorize the discharge of a wastewater subject to EPA Categorical Effluent Standards (40 CFR Parts 400-471) into a priority segment (see Appendix B).
<u>no</u>	2.	This is an amendment permit application which would authorize an increase in the mass loading of pollutants from the discharge of a wastewater subject to EPA Categorical Effluent Standards (40 CFR Parts 400-471) into a priority segment (see Appendix B).
<u>no</u>	3.	This is an amendment permit application which would change the point of discharge of a wastewater subject to EPA Categorical Effluent Standards (40 CFR Parts 400-471) into a priority segment (see Appendix B).

IF NO TO ALL OF THE ABOVE, THEN THE PERMIT ACTION IS CONSIDERED BELOW THRESHOLD, STOP HERE.

September 29, 2010
DATE

_____ 1. The IOM from standards states that "no significant degradation of high quality receiving waters is anticipated" (if receiving water has a designated high quality aquatic life use).

_____ 2.

_____ 3. The IOM from standards states that "no loss of designated uses is anticipated."

_____ The draft permit complies with all applicable provisions of 30 TAC 307, 309, and 319.

DATE _____

**30 TAC §281
APPENDIX B**

**TIDAL SEGMENTS DESIGNATED AS TCEQ PRIORITY WATERBODIES
COASTAL MANAGEMENT PROGRAM**

<u>Segment Number</u>	<u>Name</u>
2412	Sabine Lake
2411	Sabine Pass
2423	East Bay
2439	Lower Galveston Bay
0801	Trinity River Tidal
1113	Armand Bayou Tidal
2431	Moses Lake
2424	West Bay
2432	Chocolate Bay
2433	Bastrop Bay/Oyster Lake
2434	Christmas Bay
2435	Drum Bay
2442	Cedar Lakes
2441	East Matagorda Bay
2451	Matagorda Bay/Powderhorn Lake
2452	Tres Palacios Bay/Turtle Bay
2456	Carancahua Bay
2455	Keller Bay
2461	Espiritu Santo Bay
2462	San Antonio Bay/Hynes Bay/Guadalupe Bay
1801	Guadalupe River Tidal
2463	Mesquite Bay/Carlos Bay/Ayres Bay
2473	St. Charles Bay
2471	Aransas Bay
2472	Copano Bay/Port Bay/Mission Bay
2483	Redfish Bay
2482	Nueces Bay
2492	Baffin Bay/Alazan Bay/Cayo Del Grullo/Laguna Salada
2491	Laguna Madre
2493	South Bay

INDUSTRIAL EPA REVIEW CHECKLIST

Permittee

Name: Luminant Mining Company LLC

Permittee

Number: WQ0004122000

PLEASE CHECK ALL THE APPLICABLE BELOW:

Draft permit authorizes:

- | Yes | No | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | discharge to territorial seas (within 3 miles of the coastline) of the United States? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | discharge or sewage sludge management may affect another state or the Republic of Mexico? For sewage sludge management, "may affect" means, accepts sewage sludge from another state or Mexico. For discharge, it means a discharge within 3 miles of a boundary with a another state or Mexico. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | discharge of uncontaminated cooling tower blowdown with a permitted daily average flow >500 MGD? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | discharge from a designated major facility? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | discharge from a categorical industry as listed in 40 CFR Part 122, Appendix A? (see Attachment A) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | discharge from source other than categorical industry with a permitted daily average flow >0.5 MGD, except for facilities that discharge non-process wastewater? Non-process wastewater is water that (during manufacturing or processing) does not come into direct contact with, or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | minor facility discharge to critical concern species watersheds (see WQ Standards review) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (Prior to a final TMDL) discharge from a new or expanding facility to a 303(d) listed segment which has the potential to discharge any pollutant which is causing or contributing to the impairment of the segment? |
| <input type="checkbox"/> | <input type="checkbox"/> | (After a final TMDL) discharge from a new or expanding discharge to a 303(d) listed segment where the TMDL does not allocate the loadings described in the draft permit? |
| <input type="checkbox"/> | <input type="checkbox"/> | (After a final TMDL) a permit with effluent limits which allow loadings in excess of those prescribed by the TMDL for the segment? |
| <input type="checkbox"/> | <input type="checkbox"/> | (After a final TMDL) permit allows a 3 year compliance schedule for limits based on the TMDL allocations? |

**If any column is marked "YES", EPA must receive a of the full permit package.
If no column is marked "YES", EPA does not need to review the draft permit.**

Samuel Trevino

Permit Writer's Name

September 29, 2010

Date

ATTACHMENT A
PRIMARY INDUSTRIAL CATEGORIES

Adhesives and sealants.....	N/A
Aluminum forming.....	Part 467
Auto and other laundries.....	N/A
Battery and manufacturing.....	Part 461
Coal mining.....	Part 434
Coil coating.....	Part 465
Copper forming.....	Part 468
Electrical and electronic components.....	Part 469
Electroplating.....	Part 413
Explosives manufacturing.....	Part 457
Foundries.....	N/A
Gum and wood chemicals.....	Part 454
Inorganic chemicals manufacturing.....	Part 415
Iron and steel manufacturing.....	Part 420
Leather tanning and finishing.....	Part 425
Mechanical products manufacturing.....	N/A
Nonferrous metals manufacturing.....	Part 421
Ore mining.....	Part 440
Organic chemicals manufacturing.....	Part 414
Paint and ink formulation.....	Part 446
Pesticides.....	Part 455
Petroleum refining.....	Part 419
Pharmaceutical preparation.....	Part 439
Photographic equipment and supplies.....	Part 459
Plastics processing.....	Part 463
Plastic and synthetic material manufacturing.....	Part 414
Porcelain enameling.....	Part 466
Printing and publishing.....	N/A
Pulp and paper mills.....	Part 430
Rubber processing.....	Part 428
Soap and detergent manufacturing.....	Part 417
Steam electric power plants.....	Part 423
Textile mills.....	Part 410
Timber products processing.....	Part 429

TPDES PERMIT MAJOR/MINOR RATING WORK SHEET

TPDES No.: WQ0004122000

NPDES No.: TX0071081

Facility Name: Monticello-Thermo Lignite Mining Area

City/County: Dallas, Texas 75201 / Hopkins

Receiving Water (Name/Segment No.):

Sulphur / South Sulphur River 0303

Is this facility a steam electric power plant (SIC=4911) with one or more of the following characteristics?

1. Power output 500 MW or greater (no cooling pond/lake).
2. A nuclear power plant.
3. Cooling water discharge greater than 25% of the receiving waters 7Q2 flow rate.

☐ YES (score is 600, stop here).
☒ NO (continue)

Is this permit for a municipal separate storm sewer serving a population greater than 100,000?

☐ YES (score is 700, stop here).
☒ NO (continue)

FACTOR 1: Toxic Pollutant Potential

Primary SIC Code: 1221

Other SIC Codes: _____

Industrial Subcategory Code _____

Determine the Toxicity potential from Appendix A. Be sure to use the TOTAL toxicity potential column and check one.

Toxicity Group	Code	Points	Toxicity Group	Code	Points	Toxicity Group	Code	Points
<input type="checkbox"/> No process wastestreams	0	0	<input type="checkbox"/> 3.	3	15	<input type="checkbox"/> 7.	7	35
<input type="checkbox"/> 1.	1	5	<input type="checkbox"/> 4.	4	20	<input type="checkbox"/> 8.	8	40
<input type="checkbox"/> 2.	2	10	<input checked="" type="checkbox"/> 5.	5	25	<input type="checkbox"/> 9.	9	45
			<input type="checkbox"/> 6.	6	30	<input type="checkbox"/> 10.	10	50

CODE NUMBER CHECKED 5
TOTAL POINTS FACTOR 1: 25

FACTOR 2: Flow/Stream Flow Volume (Complete either Section A or B; check only one)

SECTION A - Wastewater Flow Only Considered

Wastewater Type	Code	Points
Type I:		
Flow < 5 MGD	<input type="checkbox"/> 11	0
Flow 5 to 10 MGD	<input type="checkbox"/> 12	10
Flow 10 to 50 MGD	<input type="checkbox"/> 13	20
Flow > 50	<input type="checkbox"/> 14	30
Type II:		
Flow < 1 MGD	<input type="checkbox"/> 21	10
Flow 1 to 5 MGD	<input type="checkbox"/> 22	20
Flow 5 to 10 MGD	<input type="checkbox"/> 23	30
Flow > 10 MGD	<input type="checkbox"/> 24	50
Type III:		
Flow < 1 MGD	<input type="checkbox"/> 31	0
Flow 1 to 5 MGD	<input type="checkbox"/> 32	10
Flow 5 to 10 MGD	<input type="checkbox"/> 33	20
Flow > 10 MGD	<input checked="" type="checkbox"/> 34	30

SECTION B - Wastewater & Stream Flow Considered

Wastewater Type	Percent Effluent @ Mixing Zone	Code	Points
Type I/III:			
	< 10%	<input type="checkbox"/> 41	0
	10% to 50%	<input type="checkbox"/> 42	10
	> 50%	<input type="checkbox"/> 43	20
Type II:			
	< 10%	<input type="checkbox"/> 51	0
	10% to 50%	<input type="checkbox"/> 52	20
	> 50%	<input type="checkbox"/> 53	30

CODE NUMBER CHECKED FROM SECTION A or B 34
TOTAL POINTS FACTOR 2: 30

TPDES PERMIT MAJOR/MINOR RATING WORK SHEET

TPDES No.: WQ0003229000

FACTOR 3: Conventional Pollutants (Only when limited by the permit)

A. Oxygen Demanding Pollutant: (check one) ☒ BOD/CBOD ☐ COD ☐ Other:

Permit Limits: (check one)			Code	Points
<input checked="" type="checkbox"/>	< 100 lbs/day		1	0
<input type="checkbox"/>	100 to 1000 lbs/day		2	5
<input type="checkbox"/>	1000 to 3000 lbs/day		3	15
<input type="checkbox"/>	> 3000 lbs/day		4	20

B. Total Suspended Solids (TSS)

Permit Limits: (check one)			Code	Points
<input checked="" type="checkbox"/>	< 100 lbs/day		1	0
<input type="checkbox"/>	100 to 1000 lbs/day		2	5
<input type="checkbox"/>	1000 to 5000 lbs/day		3	15
<input type="checkbox"/>	> 5000 lbs/day		4	20

C. Nitrogen Pollutant: (check one) ☐ Ammonia ☐ Other:

Permit Limits: (check one)		Nitrogen Equivalent	Code	Points
<input type="checkbox"/>	< 300 lbs/day		1	0
<input type="checkbox"/>	300 to 1000 lbs/day		2	5
<input type="checkbox"/>	1000 to 3000 lbs/day		3	15
<input type="checkbox"/>	> 3000 lbs/day		4	20

CODE NUMBER CHECKED

A 1

B 1

C -

POINTS FACTOR 3:

A 0

B 0

C 0

= 0 Total

FACTOR 4: Public Health Impacts

Is there a public drinking water supply located within 50 miles downstream of the effluent discharge (this includes any body of water to which the receiving water is a tributary)? A public drinking water supply may include infiltration galleries, or other methods of conveyance that ultimately get water from the above referenced supply

☐ YES (If yes, check toxicity potential number below)

☐ NO (If no, go to Factor 5)

Determine the human health toxicity potential from Appendix A. Use the same SIC code and subcategory reference as in Factor 1. (Be sure to use the human health toxicity group column - check one below.)

Toxicity Group	Code	Points	Toxicity Group	Code	Points	Toxicity Group	Code	Points
<input type="checkbox"/> No process wastestreams	0	0	<input type="checkbox"/> 3.	3	0	<input type="checkbox"/> 7.	7	15
<input type="checkbox"/> 1.	1	0	<input type="checkbox"/> 4.	4	0	<input type="checkbox"/> 8.	8	20
<input type="checkbox"/> 2.	2	0	<input type="checkbox"/> 5.	5	5	<input type="checkbox"/> 9.	9	25
			<input type="checkbox"/> 6.	6	10	<input type="checkbox"/> 10.	10	30

CODE NUMBER CHECKED

TOTAL POINTS FACTOR 4:

-

0

TPDES PERMIT MAJOR/MINOR RATING WORK SHEET

TPDES No.: WQ0003229000

FACTOR 5: Water Quality Factors

- A. *Is (or will) one or more of the effluent discharge limits based on water quality factors of the receiving stream (rather than technology-based federal effluent guidelines, or technology-based state effluent guidelines), or has a wasteload allocation been assigned to the discharge?*

	Code	Points
<input checked="" type="checkbox"/> YES	1	10
<input type="checkbox"/> NO	2	0

- B. *Is the receiving water in compliance with applicable water quality standards for pollutants that are water quality limited in the permit?*

	Code	Points
<input checked="" type="checkbox"/> YES	1	0
<input type="checkbox"/> NO	2	5

- C. *Does the effluent discharged from this facility exhibit the reasonable potential to violate water quality standards due to whole effluent toxicity?*

	Code	Points
<input type="checkbox"/> YES	1	10
<input checked="" type="checkbox"/> NO	2	0

CODE NUMBER CHECKED

A 2 B 1 C 2

POINT FACTOR 5:

A 10 + B 0 + C 0 = 10 Total

FACTOR 6: Proximity to Near Coastal Waters

- A. Base Score: Enter flow code here (from Factor 2): 34

Enter the multiplication factor that corresponds to the flow code: 0.15

Check appropriate facility HPRI Code (from PCS):

	HPRI#	CODE	HPRI Score	Flow Code	Multiplication Factor
<input type="checkbox"/>	1	1	20	11, 31, or 41	0.00
<input type="checkbox"/>	2	2	0	12, 32, or 42	0.05
<input type="checkbox"/>	3	3	30	13, 33, or 43	0.10
<input type="checkbox"/>	4	4	0	14 or 34	0.15
<input type="checkbox"/>	5	5	0	21 or 51	0.10
				22 or 52	0.30
				23 or 53	0.60
				24	1.00

HPRI code checked:

Base Score: (HPRI Score) X (Multiplication Factor) = (Total Points)

- B. *Additional Points -- NEP Program*

For a facility that has an HPRI code of 3, does the facility discharge to one of the estuaries enrolled in the National Estuary Protection (NEP) program (see instructions)?

	Code	Points
<input type="checkbox"/> YES	1	10
<input type="checkbox"/> NO	2	0

- C. *Additional Points -- Great Lakes Area of Concern*

For a facility that has an HPRI code of 5, does the facility discharge any of the pollutants of concern into one of the Great Lakes' 31 areas of concern?

	Code	Points
<input type="checkbox"/> YES	1	10
<input type="checkbox"/> NO	2	0

CODE NUMBER CHECKED

A - B - C -

POINT FACTOR 6:

A 0 + B 0 + C 0 = 0 Total

TPDES PERMIT RATING WORK SHEET

TPDES No.: WQ0003229000

SCORE SUMMARY

<u>Factor</u>	<u>Description</u>	<u>Total Points</u>
1	Toxic Pollutant Potential	25
2	Flow/Streamflow Volume	30
3	Conventional Pollutants	0
4	Public Health Impacts	0
5	Water Quality Factors	10
6	Proximity to Near Coastal Waters	0
TOTAL (Factors 1 through 6)		70

S1. Is the total score equal to or greater than 80?

- ☐ YES - Facility is a major, stop here.
☒ NO - Facility is NOT a major, proceed to S2.

S2. Do you want the facility to be designated a discretionary major?

- ☐ YES - Add 500 points to the score above and provide justification below.
☒ NO - Stop here

Justification:

Check appropriate classification:

- ☐ Major
☒ Minor
☐ Discretionary Major

Samuel Trevino
Permit Reviewer

512-239-0266
Phone Number

October 21, 2010
Date Reviewed

NEW SOURCE DETERMINATION WORKSHEET

PERMITTEE: Luminant Mining Company LLC
TPDES PERMIT NUMBER: WQ0004122000
NPDES PERMIT NUMBER: TX0071081
TYPE OF INDUSTRIAL
ACTIVITY: Surface Mining
SIC CODE: 1221
CATEGORICAL GUIDELINES: 40 CFR 434

A. NEW SOURCE DETERMINATION - SCREENING

ANSWER EITHER "YES" OR "NO" TO THE FOLLOWING QUESTIONS AND PROCEED AS DIRECTED:

1. Is there an applicable new source performance standard for this facility?
Yes x No ____ If YES, proceed to Item No. 2. If NO proceed to Section B, the facility is not a new source.
2. Was the current production facility in existence prior to the promulgation of the applicable new source performance standard?
Yes ____ No x If NO, proceed to Item No. 3. If YES proceed to Section B, the facility is not a new source.
3. This facility MAY be classified as a new source. Additional information will be required to conduct an evaluation and make a final determination. Please refer to 40 CFR 122.29.

B. NEW SOURCE DETERMINATION - DETERMINATION

PLEASE CHECK THE APPROPRIATE DETERMINATION:

- ____ Facility IS NOT a new source. Determination made via screening in Section A above.
- ____ Facility IS NOT a new source. Determination made via evaluation. Please see attached evaluation.
- X Facility IS a new source. Determination made via evaluation. Please see attached evaluation.

The current application indicates that operations commenced in 1999 while the previous application established a New Source determination based on operation commencement date of April 1985.

Samuel Trevino
REVIEWER

October 21, 2010
DATE

ATTACHMENT 1**EPA - REGION 6**
NPDES PERMIT CERTIFICATION CHECKLIST

In accordance with the MOA established between the State of Texas and the United States Environmental Protection Agency, Region 6, the Texas Commission on Environmental Quality submits the following draft Texas Pollutant Discharge Elimination System (TPDES) permit for Agency review.

Major **Minor** X **POTW** **Private Domestic** **Non-POTW** X

Facility Name	Luminant Mining Company LLC		
SIC Code	1221		
Type of operation	Mining		
NPDES Permit No.	TX0071081	TPDES Permit No.	WQ0004122000
Segment No.	0303	Basin	Sulphur River
Receiving Water	Sulphur/South Sulphur River		

Permit Action:	New	
	Renewal WITH changes	
	Renewal w/out changes (permit and WQS)	
	Major Amendment with Renewal	X
	Amendment/Modification WITHOUT renewal, proceed directly to question 22, below	

Answer the following.	Yes	No	N/A
1. Are there known or potential interstate water issues associated with this permit?		X	
2. Is there known or potential third-party interest/environmental concern regarding this permit action?		X	
3. Does this facility discharge to a 303(d) listed waterbody segment?	X		
If YES , does the facility discharge any of the pollutant(s) of concern identified in the 303(d) listing?	X		
4. Is this permit consistent with the approved WQMP?	X		
5. Does the facility discharge to a water body segment which has a finalized TMDL?		X	
If YES , does the permit implement the TMDL consistent with the WLAs?			X
6. Does the Fact Sheet document the rationale for the inclusion/omission of permit conditions for each 303(d) listed pollutant of concern or TMDL pollutant?	X		
7. Has a priority watershed of critical concern been identified by the U. S. Fish and Wildlife Service for this segment?		X	

	Yes	No	N/A
8. Does this permit authorize ammonia discharges > 4.0 mg/l at the edge of the mixing zone?		X	
9. Does this permit require testing for Whole Effluent Toxicity in accordance with the state's standard practices and implementation plan?		X	
10. If this facility has completed and implemented a Toxicity Reduction Evaluation (TRE), has any subsequent toxicity been identified?			X
11. Does this permit propose to grant a variance request (<i>WQS, FDF, etc.</i>) or does it incorporate a proposed or final approval of a variance request?		X	
12. If a POTW is ≥ 5 MGD, does it have an approved Pretreatment Program?			X
13. Since the last permit issuance, has the POTW had a new Pretreatment Program approved or a Pretreatment Program modification approved?			X
14. Does this permit contain authorization for wet weather related peak-flow discharges?		X	
15. Does this permit include a bypasses of any treatment unit or authorize overflows in the system?		X	
16. Does this permit include provisions for effluent trading?		X	
17. Does this permit contain specific issues on which EPA and the state are not in agreement regarding the permitting approach?		X	
18. Is this facility subject to a national effluent limitations guideline? Please specify: 40 CFR 434	X		
19. Does this permit contain "first-time" implementation of a new federal guideline, policy, regulation, etc.? Please specify:		X	
20. Is this a new facility or an expansion of an existing facility? For an EXISTING facility, if any limits have been removed or are less stringent than those in the previous permit, is it in accordance with the anti-backsliding regulations?	X		
21. Does this permit incorporate any exceptions to the standards or regulations?		X	
22. Is this a permit modification/amendment? Please specify: to authorize the addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the existing Monticello-Thermo Lignite Mining Area boundary to the north including the addition of two retention ponds.	X		

Name: Samuel Trevino

Date October 21, 2010

*****DON'T FORGET TO SAVE THIS WORKSHEET TO I:\WQ\IND\TOXIC
RATING*****

TOXIC RATING WORKSHEET

TPDES Permit No.:	WQ0004122000
NPDES Permit No.:	TX0071081
Permittee:	Luminant Mining Company LLC
Facility:	Monticello – Thermo Lignite Mining Area
SIC Codes:	1. 1221 2. 3. 4.
40 CFR Section:	434 Subparts D, E, and F
Toxic Rating for Facility:	4
Permit Writer:	Samuel Trevino Date: October 21, 2010

CALCULATE TOXIC RATING FOR THE FACILITY

For each outfall listed below, list the percent contribution to the total wastewater flow from the facility and the toxic rating for the outfall.

OUTFALL No.	% Contribution	Toxic Rating	Rating x Percent
001 & 201	Variable	4	400
101	Variable	2	200

Toxic Rating for Facility = Total/100 = 4 (BPJ) (round to nearest whole #)

OUTFALL NO.: 001

List waste streams in order of percent contribution to outfall and toxic rating for each waste stream:

Description of Waste Stream	%	Toxic Rating	Rating x Percent
Active mine water, surface water runoff, and groundwater discharge (includes Outfall 201)	Variable	4	400

Total 100 -Total: 400

Toxic Rating for Outfall = Total/100 = 4 (round to nearest whole #)

OUTFALL NO.: 101

List waste streams in order of percent contribution to outfall and toxic rating for each waste stream:

Description of Waste Stream	%	Toxic Rating	Rating x Percent
Post mining surface water	variable	2	200
Runoff (Outlet 001 effluent)			
Total	100		Total: 200

Toxic Rating for Outfall = Total/100 = 2 (round to nearest whole #)

OUTFALL NO. 201

List waste streams in order of percent contribution to outfall and toxic rating for each waste stream:

Description of Waste Stream	%	Toxic Rating	Rating x Percent
Pretreated domestic	variable	3	300
wastewater			
Total	100		Total: 300

Toxic Rating for Outfall = Total/100 = 3 (round to nearest whole #)

OUTFALL NO. _____

List waste streams in order of percent contribution to outfall and toxic rating for each waste stream:

Description of Waste Stream	%	Toxic Rating	Rating x Percent
Total	100		Total: _____

Toxic Rating for Outfall = Total/100 = _____ (round to nearest whole #)

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Yvonna Miramontes, Team Leader
Industrial Permits, Wastewater Permits Section

DATE: November 1, 2010

From: Samuel Trevino, Permit Writer
Industrial Permits, Wastewater Permits Section

Subject:

Applicant:	Luminant Mining Company LLC				
Plant Name:	Monticello-Thermo Lignite Mining Area				
<input checked="" type="checkbox"/> TPDES	<input type="checkbox"/> TCEQ	WQ0004122000	EPA ID. No.	TX0071081	
Industrial:	<input checked="" type="checkbox"/> Minor	<input type="checkbox"/> Major			
Toxic Rating:	4	Stream Segment:	0303		
Received:	June 30, 2010	Administratively Complete:	August 16, 2010		
Assigned:	September 21, 2010	To Team Leader:	November 1, 2010		
Tech Complete:	November 1, 2010				

ATTACHMENTS:	State-Only	TPDES
New	<input type="checkbox"/>	<input type="checkbox"/>
Renewal	<input type="checkbox"/>	<input type="checkbox"/>
Major Amendment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Minor Amendment	<input type="checkbox"/>	<input type="checkbox"/>
Staff Initiated Amendment	<input type="checkbox"/>	<input type="checkbox"/>
Fact Sheet	<input type="checkbox"/>	<input type="checkbox"/>
SOB/Technical Summary	<input type="checkbox"/>	<input checked="" type="checkbox"/>

RATIONAL Used to Draft Permit:	
<input checked="" type="checkbox"/> Federal Guidelines:	40 CFR 434 Subparts D, E, and F
<input checked="" type="checkbox"/> Waste Load Evaluation:	Waste Load Allocation/Evaluation for Segment No. 303.
<input checked="" type="checkbox"/> TCEQ Rules:	TAC 305, 307, & IPs
<input checked="" type="checkbox"/> Existing Permit:	WQ0004122000
<input checked="" type="checkbox"/> Other:	BPJ

Company's Rep: Mr. Joel Palin

Phone #: (214) 875-9127

Fax #: (214) 875-9133

Known Opposition: none If yes, briefly explain:

Comments:

FILE LOCATION: I:\WQ\IND\ERC AND REGION PERMITS\WQ0004122000.docx

ATTACHMENT “E”

TPDES PERMIT NO. WQ0004122000

APPLICATION BY	§	BEFORE THE
Luminant Mining Company	§	TEXAS COMMISSION
FOR TPDES	§	ON
PERMIT NO. WQ0004122000	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on **Luminant Mining Company LLC's** application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received faxed comments from Linda Tucker of the East Texans Coalition for Clean Air. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Luminant Mining Company LLC, which operates Monticello-Thermo Lignite Mining Area, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0004122000 to authorize the

addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the existing Northern Boundary of the Monticello-Thermo Lignite Mining Area.

The current permit authorizes the discharge of mine drainage and surface runoff from the active mining area, groundwater, and previously monitored effluents (surface runoff from post mining areas and previously monitored Outfall 001 effluent on an intermittent and flow variable basis via Outfall 101 and treated domestic wastewater at a daily average flow not to exceed 2,600 gallons per day via Outfall 201) on an intermittent and flow variable basis via Outfall 001.

The facility is located on State Highway 11, approximately 2.5 miles southeast of the intersection of State Highway 11 and Interstate Highway 30, Hopkins County, Texas 75482.

The effluent is discharged to an unnamed tributary; thence to Rock Creek; thence to White Oak Creek; thence to Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin.

Procedural Background

The application was received on June 30, 2010, and declared administratively complete on August 16, 2010, and declared technically complete on November 2, 2010. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in the *Sulphur Springs News Telegram* on September 14, 2010 and the *La Prensa Hispana* on September 15, 2010. The Notice of Application and Preliminary Decision (NAPD) was published in the *Sulphur Springs News Telegram* on January 20, 2011 and the *La Prensa Hispana* on January 12, 2011. The public comment period closed on February 22, 2011. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State website: www.sos.state.tx.us;
- for TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select "TAC Viewer" on the right, then "Title 30 Environmental Quality");
- for Texas statutes: www.capitol.state.tx.us/statutes/statutes.html;
- to access the TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Rules and Rulemaking," then "Download TCEQ Rules");
- for Federal rules in Title 40 of the Code of Federal Regulations: www.epa.gov/epahome/cfr40.htm ; and
- for Federal environmental laws: www.epa.gov/epahome/laws.htm.

Commission records for this facility are available for viewing and copying. Those records are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Hopkins County Clerk's Office, 128 Jefferson Street, Suite C, Sulphur Springs, Texas.

COMMENTS AND RESPONSES

COMMENT 1:

Linda Tucker is concerned that lignite is a known carcinogen and it causes many health problems. Additionally she stated that if you overlay the Texas Coal Mines Map/Lignite Mines Map with Texas Coal Burning Plants Map, and the Texas Cancer Map, they are barely indistinguishable. She commented that Lignite mining is being

banned all over the world; why not here in Texas? Ms. Tucker further commented that Texas has the worst Co2 emissions in the United States and that people are sick and getting sicker; why?

RESPONSE 1:

It is the purpose of the Texas Surface Water Quality Standards (TSWQS), 30 Texas Administrative Code (TAC) Chapter 307, to maintain the quality of water in the state and to be protective of human health, terrestrial wildlife, livestock, domestic animals, and aquatic life along the discharge route. The designated uses and associated criteria in Appendix A of the TSWQS for Segment 0303, Sulphur/South Sulphur River, was used to evaluate the permit application. Segment 0303 has the following designated uses: high aquatic life use and contact recreation. The draft permit has been designed to protect human health resulting from contact recreation, consumption of aquatic organisms, and consumption of drinking water. It has also been designed to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals resulting from contact, consumption of aquatic organisms, or consumption of water. The water quality permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. The wastewater permitting process does not evaluate Co2 emissions, nor the banning of Lignite mining in any area, nor the reasons that people are becoming sick. TCEQ does not have jurisdiction to address concerns such as those listed in Comment number 1 above in the wastewater permitting process.

COMMENT 2:

Linda Tucker inquired about the waterways Monticello Mine involves or intends to involve with their disposal process.

RESPONSE 2:

The effluent from the facility is discharged to an unnamed tributary; thence to Rock Creek; thence to White Oak Creek; thence to Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin. The unclassified receiving waters have limited aquatic life use for the unnamed tributary and intermediate aquatic life use for Rock Creek. The designated uses for Segment No. 0303 are high aquatic life use and contact recreation. In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Rock Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

COMMENT 3:

Linda Tucker inquired about the precautions Monticello Mine intends to implement to secure clean water and air, and what their current precautions are. She also requested definitive reports on all Texas Coal Mines.

RESPONSE 3:

The permit application review for a TPDES permit is limited to the wastewater treatment or disposal operations proposed at the facility. Wastewater at the Monticello Mine is processed in the following way: Mine pit and surface water runoff from active mining areas and groundwater discharge at the Monticello Mine are routed to active mining-sedimentation ponds prior to discharge via Outfall 001; a polyelectrolyte may be

added to the wastewaters to facilitate settling of solids. Mine pit and surface water runoff from post mining areas and groundwater discharge are routed to post mining sedimentation pond(s) prior to discharge via Outfall 101; a polyelectrolyte may be added to the wastewaters to facilitate settling of solids. Sanitary wastewater generated at the coal loading station is routed for treatment by extended aeration, clarification and disinfection by chlorine. Solids are aerobically digested and hauled to the City of Paris wastewater treatment facilities. The pretreated sanitary wastewaters are discharged via Outfall 201 are commingled with active mining related wastewaters for discharge via Outfall 001.

As stated in the previous response, In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Rock Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Additionally, technology-based effluent limitations have been included in the draft permit at Outfall 001 to ensure compliance with 40 CFR §434.11(j)(1). New source performance standards at Subpart E apply to the post mining area discharges. 40 CFR Part 434, Subpart F - Miscellaneous Provisions also applies. To comply with 40 CFR Part 434 each individual settling pond was considered a point source for meeting the applicable effluent guidelines. Therefore, the draft requires that the permittee sample and analyze at a minimum frequency of once per two weeks for active mining area ponds and once per month for post mining area ponds. The permittee shall monitor the effluent discharge from each retention pond constructed and operated under this

permit, except for: (a) effluent discharges from retention ponds in a series, which shall be sampled at a point from the last pond in the series; and (b) effluent discharges from multiple retention ponds commingled in a pipe or a man-made conveyance structure before discharging into waters of the state, which shall be sampled at a point prior to mixing with other waters. The permittee shall submit the effluent discharge monitoring data collected for the prior calendar quarter pursuant to the monitoring and reporting requirement to the TCEQ Enforcement Division and to the TCEQ Region 5 office. The effluent discharge monitoring data reported the preceding two years shall be submitted by the permittee as an attachment to all permit renewal and amendment applications. Selenium at Outfall 001, aluminum at Outfall 101, and DO at Outfall 201 are based on BPJ and are continued in the draft permit from the existing permit.

COMMENT 4:

Linda Tucker inquired about the underground areas that are compromised by all Texas mines; including maps showing how deep and how wide they are, specifically involving communities.

RESPONSE 4:

When evaluating an application for a wastewater discharge permit, the TCEQ does not consider the underground areas involved with Texas mines. These issues are under the jurisdiction of the Texas Oil and Gas Commission.

COMMENT 5:

Linda Tucker requested up-to-date EPA readings for air, water, ground; Heavy Metals Testing; pesticides and hazardous particulates testing involved with Lignite Mining and stated that her Coalition wants these tests done on air, water, ground, animal, and human populations.

RESPONSE 5:

Any request for testing by the Environmental Protection Agency should be directed to the EPA Regional office in Dallas, Texas.

COMMENT 6:

Linda Tucker requested that the Texas Coal Mines/Luminant/TXU be investigated for illegal procedures and asked if they are following State/Federal regulated guidelines.

RESPONSE 6:

The draft permit, and previous drafts of the permit, was developed according to the applicable state and federal rules and requirements. A review of the facility's compliance history was completed as part of this permit action. This review, from June 30, 2005 to September 22, 2010 showed that the facility had no exceedence of their permit limitations. The TCEQ also received approval of the draft permit from the Environmental Protection Agency in January 2011. Therefore, the TCEQ believes the draft permit meets all applicable state and federal rules regarding wastewater discharge permitting.

COMMENT 7:

Linda Tucker inquired about Governor Rick Perry accepting money from TXU/Luminant. She also inquired about lobbyists or related entities accepting gratuities, and how many of our Texas politicians, State and or Federal agencies, hold interest in TXU/Luminant/coal mining; and what subsidiaries or entities are involved and getting a kickback.

RESPONSE 7:

As previously stated, the permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. TCEQ does not have jurisdiction to address concerns such as those listed in Comment 7 above in the wastewater permitting process.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes were made to the draft permit based on the comments received.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark Vickery
Executive Director

Robert Martinez, Director
Environmental Law Division



Anthony Tatu, Staff Attorney
Environmental Law Division
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

